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N.L.R.B.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 706

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

MACKAY RADIO & TELEGRAPH COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 15, 1938
CERTIORARI GRANTED FEBRUARY 28, 1938

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

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vs.

MACKAY RADIO AND TELEGRAPH COMPANY

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A1-A [Caption omitted.]

1 Before the National Labor Relations Board, Twentieth Region

Case No. XX-C-2

IN THE MATTER OF MACKAY RADIO AND TELEGRAPH COMPANY OF CALIFORNIA AND AMERICAN RADIO TELEGRAPHISTS' ASSOCIATION, SAN FRANCISCO LOCAL NO. 3

Charge

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned as Secretary of the American Radio Telegraphists' Association, San Francisco Local No. 3, 52 California Street, San Francisco, California, hereby charges that the Mackay Radio and Telegraph Company of California, 22 Battery Street, San Francisco, California, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), 8 (2), and 8 (3) of the National Labor Relations Act in that:

I. The Said Mackay Radio and Telegraph Company, through *it* Chief Supervisor of the San Francisco office, Mr. A. C. Jorgensen, and others has interfered with, intimidated, restrained, and coerced members of the aforesaid union in the exercise of the rights guaranteed it in Section 7 of the National Labor Relations Act. On or about October 8, 1935, said Jorgensen, in addressing a group of employees of the Mackay Radio and Telegraph Company, members of the said union, at a meeting in the Bellevue Hotel, San
2 Francisco, California, did discriminate, interfere with, intimidate, and coërce the members of said union by refusing to reinstate all workers without prejudice who were then on strike for no other reason than that they belonged to the union, this action and sundry and divers other actions by the company, its agents and servants, being directly in violation of Section 8 (1) and 8 (3) of the National Labor Relations Act.

II. The said Mackay Radio and Telegraph Company, through its Chief Supervisor of the San Francisco office, Mr. A. C. Jorgensen, and others, on or about October 8, 1935, called a meeting at the Bellevue Hotel, San Francisco, California, of certain members of the American Radio Telegraphists' Association, San Francisco Local No. 3, from which meeting certain other members of said union were excluded, and did at said meeting dominate and/or interfere with the administration of said union, in direct violation of Section 8 (2) of the National Labor Relations Act.

III. A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer were and are members of the said American Radio & Telegraphists' Association, San Francisco Local No. 3 and, with the exception of P. D. Phelps, have from time to time represented

the said Local in dealings between the said Mackay Radio and Telegraph Company and the union for purposes of collective bargaining, to engage in concerted activities, and for other mutual aid and/or protection. On or about October 9, 1935, the above mentioned members of the union attempted to regain their regular jobs with the company but were told by their respective superiors that they were no longer employees of the company, although all other employees in the San Francisco office had been returned to their jobs
3 following the meeting in the Bellevue Hotel above referred to. The said employees, A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, severally filed applications for reemployment at their old jobs but to date the company has failed to re-employ them and has prevented them from pursuing their normal occupations by the actions of the said company and its executives, and have been otherwise discriminated against, solely because of and for the sole reason that they have been actively engaged in assisting the said union. By the attitude of the company and its agents and servants in the above respect the company has violated and is violating Section 8 (3) of the National Labor Relations Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

AMERICAN RADIO TELEGRAPHISTS' ASSOCIATION,
SAN FRANCISCO LOCAL NO. 3.
By MERVYN R. RATHBORNE, *Acting Secretary.*

Subscribed and sworn to before me this 15th day of October, 1935.

(s) R. G. Wagenet,
R. G. WAGENET, *Director.*

4 Before the National Labor Relations Board

[Title omitted.]

Complaint

It having been charged by American Radio Telegraphists' Association, San Francisco Local No. 3, that the Mackay Radio & Telegraph Company, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Twentieth Region, as agent of the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series I, Article IV, Section 1, hereby alleges the following:

1. The respondent is and has been since September 2, 1927, a corporation organized under and existing by virtue of the laws of the State of California, having its principal office in the City and County

of San Francisco, and States of California, and office in Oakland, California, Los Angeles, California, San Diego, California, Portland, Oregon, Seattle, Washington, Tacoma, Washington, Honolulu, Hawaii, and Manila, Philippine Islands, and is now and has continuously been engaged at a place of business in the City and County of San Francisco, State of California (hereinafter called the San Francisco office), and at each of said other offices, in the receipt and transmission of telegraph, radio, cable, and other messages.

2. The respondent, in the course and conduct of its business, receives and transmits telegraph, radio, cable, and other messages from and through the states and territories of the United States, other than the State of California, and foreign countries to and from the State of California and through the State of California to and from its San Francisco office, all of the aforesaid constituting a continuous flow of trade, traffic, commerce, and communication among the several states and territories of the United States and with foreign countries.

3. The aforesaid operations of respondent occur in the course and current of commerce among the several states and territories of the United States and with foreign countries, are an integral part of the operations of instrumentalities of such commerce, and constitute commerce among the several states and territories of the United States and with foreign countries.

4. The respondent, through A. C. Jorgensen, its traffic manager, and by its various agents and employees on October 5, 1935, while engaged at San Francisco as described above, did discharge A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, operators employed by the respondent at the San Francisco office and has at all times since said date refused to re-employ these said employees, A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer.

5. The respondent discharged and refuses to employ the said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer for the reason that the said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, joined and assisted a labor organization known as American Radio Telegraphists' Association, San Francisco Local No. 3, and engaged in concerted activities with other employees in the San Francisco office for the purpose of collective bargaining and other mutual aid and protection.

6. By its discharge of said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer and its refusal to employ said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, as above set forth*er*, the respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in

an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

7. By its discharge of said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, and did discourage and is discouraging membership in the American Radio Telegraphists' Association, San Francisco Local No. 3, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (3) of said Act.

7 8. The respondent by its various agents and employees on October 5, 1935, did initiate and form a labor organization or plan for the purpose of dealing with its employees concerning grievances, labor disputes and conditions of work and for the purpose of interfering with, restraining and coercing its employees in the rights guaranteed them under Section 7 of said Act, and did dominate and interfere with the administration of said labor organization or plan and contribute financial and other support thereto.

9. By its organization and formation of the said labor organization or plan, and by dominating and interfering with the administration of same and contributing financial and other support thereto, the respondent did interfere with, restrain and coerce its employees in the rights guaranteed by Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

10. By its initiation and formation of the said labor organization or plan, and by dominating and interfering with the administration of same and contributing financial and other support thereto, the respondent did thereby engage in an unfair labor practice within the meaning of Section 8, subdivision (2) of said Act.

11. The aforesaid unfair labor practices of respondent have occurred and are occurring in the course and current of commerce among the several states and territories of the United States and with foreign countries, and have led and tend to lead to labor disputes and other forms of industrial strife and unrest which have the intent and necessary effect of burdening and obstructing said commerce and the free flow thereof, by impairing the efficiency

8 and operation of instrumentalities of said commerce.

12. The aforesaid acts of respondent enumerated in paragraphs four, five, six, seven, eight, nine, and ten (4, 5, 6, 7, 8, 9, 10) above constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Wherefore, the National Labor Relations Board on the 9th day of November, 1935, issues its complaint against the Mackay Radio & Telegraph Company, respondents herein.

Notice of hearing

Please take notice that on the 2nd day of December, 1935, at 10:00 o'clock in the forenoon, at Court Room 265, United States Post Office Building, Seventh and Mission Streets, San Francisco, California, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series I, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the 20th Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, within five days from the date of service thereof.

Enclosed herewith for your information is a copy of Rules
9 and Regulations, Series I, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its complaint and notice of hearing, to be signed by the Regional Director for the Twentieth Region on the 9th day of November, 1935.

R. G. WAGENET,
Regional Director for the Twentieth Region.

10 Before the National Labor Relations Board

[Title omitted.]

Order designating trial examiner

November 27, 1935

A charge having been filed in this matter, and it having appeared to the Regional Director of the 20th Region, that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that Henry Eickhoff, Jr., act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By director of the Board:

[SEAL] (s) Benedict Wolf.
BENEDICT WOLF, *Secretary.*

11 Before National Labor Relations Board

[Title omitted.]

Order extending time to answer

Good cause appearing therefor, respondent is hereby granted until the 19th day of November, 1935, to file his Answer to the Complaint in the above entitled matter.

Dated this 16th day of November, 1935.

[s] R. G. Wagenet,
per B. E.
R. G. WAGENET,
Regional Director for the Twentieth Region.

12 Before the National Labor Relations Board

[Title omitted.]

Answer

The respondent, Mackay Radio and Telegraph Company, the post office address of which is No. 22 Battery Street, San Francisco, California, without in any way consenting to the jurisdiction of the National Labor Relations Board to hear and determine the matters alleged in the complaint herein and expressly reserving its right to object, by motion or otherwise, to such jurisdiction of said Board, and appearing herein solely for the purpose of protecting its rights in the premises, answering the complaint in the above entitled proceeding:

1. Denies each and every allegation of fact and conclusion of law contained in paragraphs designated "5", "6", "7", "9", "10" and "12" of the complaint.

2. Denies each and every allegation of fact and conclusion of law contained in paragraph designated "4" of the complaint, except that it admits that on or about October 5, 1935, A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, being the persons named in said paragraph and then in the employ of respondent, did voluntarily leave the employ of respondent and have not to date been reemployed.

13 3. Denies each and every allegation contained in paragraph designated "8" of the complaint, except that it admits that in the late evening of October 7, 1935 certain former employees of the respondent represented to one of its agents at San Francisco that they desired to hold a meeting of a large number of former employees of the Company for the sole purpose of deciding whether such former employees would make application to the respondent for reemployment, that no adequate meeting place was available to them without charge and that they had no funds to defray the expense of hiring

any such place and requested such agent of the respondent to pay the expense thereof; that relying upon said representations and in compliance with said request, said agent of the respondent, acting solely on his own responsibility and without the knowledge of any officer of the respondent, did agree to pay and did pay for the rental of a room at a hotel in the City of San Francisco, at which a meeting of its former employees was held in the early morning of October 8, 1935.

4. Denies that it has or is engaged in unfair labor practices as alleged in paragraph designated "11" of the complaint and further denies it has taken or caused to be taken any action with respect to the matters alleged in said paragraph or with respect to any other matter which has led or tends to lead to labor disputes and other forms of industrial strife and unrest, the intent and necessary effect of which is to burden and obstruct the course and current of
14 commerce among the several states and territories of the United States and with foreign countries.

Wherefore, the respondent prays that the complaint herein be dismissed.

MACKAY RADIO AND TELEGRAPH COMPANY.
By (Signed) I. MCNAMEE, *President.*
[*Duly sworn to by Luke McNamee; jurat omitted in printing.*]

16 Before the National Labor Relations Board

[Title omitted.]

Amended complaint

It having been charged by American Radio Telegraphists' Association, San Francisco Local No. 3, that the Mackay Radio & Telegraph Company, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Attorney for the Twentieth Region, as agent of the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series I, Article IV, Section 1, hereby alleges the following:

1. The respondent is and has been since September 2, 1927, a corporation organized under and existing by virtue of the laws of the State of California having its principal office in the City and County of San Francisco, and State of California, and office in Oakland, California, Los Angeles, California, San Diego, California, Portland, Oregon; Seattle, Washington; Tacoma, Washington; Honolulu, Hawaii; and Manila, Philippine Islands, and is now and has
17 continuously been engaged at a place of business in the City and County of San Francisco, State of California (hereinafter called the San Francisco Office) and at each of said other

offices, in the receipt and transmission of telegraph, radio, cable, and other messages.

2. The respondent, in the course and conduct of its business, receives and transmits telegraph, radio, cable and other messages from and through the states and territories of the United States, other than the State of California, and foreign countries to and from the State of California and through the State of California to and from its San Francisco office, all of the aforesaid constituting a continuous flow of trade, traffic, commerce, and communication among the several states and territories of the United States and with foreign countries.

3. The aforesaid operations of respondent occur in the course and current of commerce among the several states and territories of the United States and with foreign countries, are an integral part of the operations of instrumentalities of such commerce, and constitute commerce among the several states and territories of the United States and with foreign countries.

4. The respondent, through A. C. Jorgensen, its traffic manager, and by its various agents and employees during the period approximately October 7, 1935, to October 10, 1935, inclusive, while engaged at San Francisco as described above, did refuse to reemploy A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone and G. E. Palmer, operators employed by the respondent at the San Francisco office and has at all times since said date refused to reemploy these said employees, A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer.

5. The respondent refuses to re-employ the said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer for the reason that the said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer joined and assisted a labor organization known as American Radio Telegraphists' Association, San Francisco Local No. 3, and engaged in concerted activities with other employees in the San Francisco office for the purpose of collective bargaining and other mutual aid and protection.

6. By its refusal to re-employ said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, as above set forth, the respondent did interfere with, restrain, and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

7. By its refusal to re-employ said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, and did discourage and is discouraging membership in the American Radio Telegra-

phists' Association, San Francisco Local No. 3, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (3) of said Act.

8. The respondent by its various agent and employees during the period approximately October 7, 1935, to October 10, 1935, inclusive, did initiate and form a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act for the purpose of dealing with its employees concerning grievances, labor disputes and conditions of work and for the purpose of interfering with, restraining, and coercing its employees in the rights guaranteed them under Section 7 of said Act, and did dominate and interfere with the administration of said labor organization or plan and contribute financial and other support thereto.

9. By its organization and formation of the said labor organization or plan, and by dominating and interfering with the administration of same and contributing financial and other support thereto, the respondent did interfere with, restrain, and coerce its employees in the rights guaranteed by Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

10. By its initiation and formation of the said labor organization or plan, and by dominating and interfering with the administration of same and contributing financial and other support thereto, the respondent did thereby engage in an unfair labor practice within the meaning of Section 8, subdivision (2) of said Act.

11. The aforesaid unfair labor practices of respondent have occurred and are occurring in the course and current of commerce among the several states and territories of the United States and with foreign countries, and have led and tend to lead to labor disputes and other forms of industrial strife and unrest which have the intent and necessary effect of burdening and obstructing said commerce and the free flow thereof, by impairing the efficiency and operation of instrumentalities of said commerce.

12. The aforesaid acts of respondent enumerated in paragraphs four, five, six, seven, eight, nine, and ten (4, 5, 6, 7, 8, 9, 10) above constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (2), and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Wherefore, the National Labor Relations Board, having requested and been duly granted leave to amend its complaint in the above-entitled matter to conform to proof, does this 16th day of December, 1935, issue its amended complaint against the Mackay Radio & Telegraph Company, respondents herein.

BERTRAM EDISES,
Regional Attorney for the Twentieth Region.

21 Before National Labor Relations Board

[Title omitted.]

Order transferring preceeding to National Labor Relations Board

December 19, 1935

A hearing having been duly held in this proceeding before a Trial Examiner duly appointed, and the Board deeming it necessary, in order to effectuate the purpose of the National Labor Relations Act, that the proceeding be transferred to and continued before it,

It is hereby ordered, in accordance with Section 35 of Article II of the National Labor Relations Board Rules and Regulations—Series 1, that this proceeding be transferred to and continued before the Board.

By Direction of the Board:

[SEAL] Benedict Wolf,
BENEDICT WOLF, *Secretary.*

22 Before the National Labor Relations Board

[Title omitted.]

Motions to resubmit, for oral argument and for review by Board of Trial Rulings

Mackay Radio and Telegraph Company, the Respondent herein, having appeared herein specially and solely for the purpose of protecting its rights and without in any way consenting to the jurisdiction of the National Labor Relations Board to here determine the matters alleged in the complaint herein, having answered the complaint, and the said National Labor Relations Board having designated Henry Eickhoff, Jr., as Trial Examiner in the case and directed him to perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board, by an Order entered at a regular meeting of said National Labor Relations Board on the 27th day of November, 1935, and the case having come on for hearing before said Henry Eickhoff, Jr., as Trial Examiner on December 2, 1935, and oral testimony having been heard of certain witnesses called on behalf of said National Labor Relations Board and of certain witnesses called on behalf of Mackay Radio and Telegraph Com-

23 pany, and said National Labor Relations Board having ordered the transfer of the case from the Trial Examiner to the National Labor Relations Board in Washington after all of the testimony had been taken and both sides had rested but before counsel for the Respondent, Mackay Radio and Telegraph Company, had completed his oral argument, and without permitting said Trial Examiner to make and file his intermediate report

I

Now, therefore, the Respondent, Mackay Radio and Telegraph Company, without waiving any of its rights herein, and reserving all of its objections to the jurisdiction of the National Labor Relations Board herein, moves as follows:

(1) That this case be resubmitted or transferred back to Henry Eickhoff, Jr., as Trial Examiner, with directions that he prepare and file an intermediate report in accordance with Section 30 of the Rules and Regulations—Series 1 of the National Labor Relations Board;

(2) That the time within which the Respondent, Mackay Radio and Telegraph Company, shall be permitted to file a brief herein be extended until the expiration of fifteen days after the determination of this motion.

II

In the event that the National Labor Relations Board shall deny the above motion and shall refuse to resubmit or transfer back this case to the Trial Examiner, the Respondent, Mackay Radio and Telegraph Company, moves as follows:

24 (1) That the Respondent, Mackay Radio and Telegraph Company, be accorded the opportunity for oral argument in accordance with the provisions of Section 28 of the Rules and Regulations—Series 1 of the National Labor Relations Board:

(2) That the time within which the Respondent, Mackay Radio and Telegraph Company, shall be permitted to file a brief herein be extended until the expiration of fifteen days after the oral argument.

III

Whether or not either or both of the above motions are granted, the Respondent, Mackay Radio and Telegraph Company, desires to have the National Labor Relations Board review the rulings made by the Trial Examiner during the hearing of this case to which counsel for said Respondent objected or excepted, and therefore moves:

(1) That the National Labor Relations Board review each and every ruling made by the Trial Examiner herein to which objection or exception was made or taken by counsel for the Respondent, Mackay Radio and Telegraph Company, all of which rulings are claimed to be substantially prejudicial, and that no decision as to the merits of this case be made until after such review shall have been had;

(2) That if the Board desires a more extended statement of exceptions than that contained in this motion, a period of five days after notice of the decision on this motion be granted to the

25 Respondent, Mackay Radio and Telegraph Company, within

I

The action of the Board in transferring the case from San Francisco to Washington after all of the testimony had been taken but before the Trial Examiner had prepared his intermediate report deprived the Respondent of one of the most essential requisites to a judicial trial as that term is used in Anglo-Saxon procedure, namely, the right to have the credibility of witnesses determined by the person who saw and heard them on the witness stand. Although this procedure may have been in accordance with Sections 35 and 36 of the Rules and Regulations, it certainly was not contemplated by the Act, and if it were, the constitutionality of the Act would be open to serious question on the ground that it violates the Fifth Amendment to the Constitution of the United States by authorizing an administrative body to deprive a person of property without due process of law.

In order to avoid both the constitutional question and the problem of statutory construction, an attempt should be made to reconcile the Regulations with the requirements of due process. This can be done without doing violence to any of the language in the Regulations. Sections 7 to 32 provide in considerable detail the procedure to be followed where the hearing is held and completed before
26 the Trial Examiner. The procedure in the event of a transfer of the proceedings is contained in Sections 35 and 36. If the transfer takes place either before the taking of testimony has begun or before it is finished, the procedure is to be the same before the Board as it would be before the Trial Examiner insofar as it is applicable.

The possibility of a transfer after the completion of the testimony is not expressly provided for and a ruling that it cannot be done under any circumstances would not contravene any provision in the Regulations. A proper interpretation of Section 36 (a) is that the Trial Examiner shall prepare an intermediate report if the hearing was held and completed before him, and may do so even though only part of the hearing was held before him if the Board directs him to do so. Section 36 (b) should be limited to instances in which the testimony has been heard in whole or in part by the Board itself.

It is therefore submitted that in order to enable conflicts of oral testimony to be resolved by the person who heard and saw the witnesses who have such testimony and thereby avoid serious doubts as to the legality of the trial accorded the Respondent, Mackay Radio and Telegraph Company, that the case be referred back to the Trial Examiner in order that he may prepare and file an intermediate report.

27

II

Section 28 of the Rules and Regulations of the Board provides that where a case is heard before a Trial Examiner, "Any party to

the proceeding shall be entitled to a reasonable period at the close of the hearing for oral argument, * * *." As noted above, Section 35 provides that where a case is transferred to the Board from the Trial Examiner, the provisions applicable to proceedings before the Trial Examiner shall apply to proceedings before the Board after transfer, insofar as such provisions are applicable. It seems quite obvious that oral argument is just as applicable before the full Board as it is before the Trial Examiner, and just as applicable whether the testimony is heard in whole or in part by the Board or wholly by the Trial Examiner. In any event, the parties to the proceeding should have the right to argue the case orally before the body which is to make the decision. This right is clearly accorded by the Regulations and should not be denied any party who wishes to exercise it.

III

It is obvious from even the most casual reading of the Regulations that it is intended that any party to a proceeding before a Trial Examiner shall have the right to have the rulings of the Trial Examiner reviewed by the full Board. Where the Trial Exam-
28 iner is permitted to make and file his intermediate report, it is provided that the complaining party shall file a statement of exceptions with the Board at Washington within ten days (unless an extension of time is granted by the Board) from the date of service of the intermediate report. How or when exceptions should be brought to the notice of the Board where, in a case such as the instant one, all of the testimony is heard by the Trial Examiner but he is not permitted to file an intermediate report, is not provided for any may be open to some conjecture. The right of any party to require such a review cannot, however, be open to doubt. If the method adopted by the Respondent, Mackay Radio and Telegraph Company, in this case does not meet with the approval of the Board, then it is incumbent on the Board to advise said Respondent what procedure should be followed and to allow it sufficient time to comply with such advice.

IV

The requests for extensions of time need no amplification or argument in their support. Obviously, a different type of brief will be in order if the case is to be referred back to the Trial Examiner for a report than would be in order if the case is to be decided in the first instance by persons who did not have the opportunity to see and hear the witness on the stand. All that is requested is the same length of time to prepare a brief for the Trial Examiner in the event that it is referred back to him or for the Board itself in the event the motion to resubmit is denied, that the Board itself suggested in its telegram terminating the proceedings before the Trial Examiner.

29 The request for five days within which to prepare a statement of exceptions, if a further statement be deemed by the

Board to be necessary, seems to be the minimum of time that could possibly be granted for this purpose and some definite period of time should be fixed because of the ambiguity in the Regulations as to when such a statement of exceptions should be filed, if at all.

Respectfully submitted.

(Signed) J. Harold Merrick,
J. Harold Merrick,
Attorney for Respondent.
Office & P. O. Address, 67 Broad Street,
Borough of Manhattan New York City.

30 Before National Labor Relations Board

[Title omitted.]

Order denying motion to resubmit

January 7, 1936

This matter coming on for consideration by the Board on the Motion of respondent to resubmit this case to the Trial Examiner with directors that he prepare and file an intermediate report in accordance with Section 30 of the Rules and Regulations—Series 1 of the National Labor Relations Board, and the Board having considered same and being advised in the premises,

It is hereby ordered that said Motion be and the same hereby is denied.

By direction of the Board:

Benedict Wolf, *Secretary.*

31 Before The National Labor Relations Board

[Title omitted.]

Notice of hearing

Please take notice that a hearing will be held before the National Labor Relations Board on Monday, January 20, 1936, at 11 a. m., in Room 406, Denrike Building, 1010 Vermont Avenue, Washington, D. C., for Final Argument in the above entitled matter.

You may appear and be heard if you so desire.

Dated, Washington, D. C., January 9, 1936.

By direction of the Board:

Benedict Wolf,
Benedict Wolf, *Secretary.*

To:

J. Harold Merrick, Esq.,
67 Broad St., New York City.

Mervyn Rathborne,
Secretary, American Radio Telegraphists' Assn.
52 California St., San Francisco.
Nat'l. Labor Relations Board, 20th Region.

32 Before National Labor Relations Board

[Title omitted.]

Statement of exceptions

Now comes Mackay Radio and Telegraph Company, the Respondent herein, having appeared herein specially and solely for the purpose of protecting its rights and without in any way consenting to the jurisdiction of the National Labor Relations Board to here determine the matters alleged in the complaint herein, and pursuant to leave granted to it by the National Labor Relations Board, herewith sets forth its statement of exceptions to the rulings made by the Trial Examiner at the hearing before him on December 2, 1935, inclusive, to all of which rulings the Respondent duly and timely objected and excepted.

The Respondent herein being aggrieved thereby, prays the National Labor Relations Board to review the following rulings made by said Trial Examiner during the course of said hearing:

1. Refusal to grant Respondent's motion to dismiss complaint after the attorney for the Board had rested (Transcript p. 1487).

2. Blanket refusal to strike testimony admitted over objections by Respondent (1969).

3. Refusal to exclude testimony by witness Rone as to reasons for his joining ARTA (27–50).

33 4. Refusal to exclude testimony of witness Rone as to history of organization and development of San Francisco Local No. 3 of ARTA (51–103).

5. Refusal to exclude testimony of witness Rone as to information given him by Rathborne that men at Portland had been locked out by Respondent (143–144).

6. Refusal to exclude testimony of witness Loudermilk as to conversations with Mr. Richards in Chicago to the effect that Respondent tried to discourage men from joining ARTA (352–354).

7. Refusal to exclude testimony of witness Loudermilk as to alleged violations by Respondent of NRA Code (365).

8. Refusal to exclude testimony of witness Rone as to what Mr. Tuel had said without requiring witness to state source of his knowledge (29).

9. Refusal to exclude testimony of witness Rone as to what Mr. Jorgensen and Mr. Buckley said to pickets while witness was at dinner (107).

10. Refusal to exclude testimony of witness Rone as to practices of competing companies as to vacations (44–48).

11. Refusal to exclude testimony of witness Loudermilk as to telephone conversation with Salisbury (126).

12. Refusal to exclude testimony of witness Loudermilk as to activities of CEA and of Mr. McDonough in New York City (428–435).

13. Refusal to exclude testimony of witness Rone as to contents of telegrams (119).

14. Refusal to permit witness Rone to be questioned as to affiliations of ARTA with communistic organizations (306).

15. Refusal to permit witness Rone to be questioned as to his feeling toward scabs (307, 308, 310).

16. Refusal to permit witnesses Rone (312), Phelps (841) and Loudermilk (527, 533) to be questioned as to their attitude
34 toward boycott against the Respondent.

17. Refusal to permit witnesses Loudermilk (470–476), Palmer (628 et seq.), Bash (756), and Henderson (996) to be questioned as to the connection of ARTA and its various officials and representatives, including the witnesses, with communism.

18. Refusal to permit witnesses Loudermilk (493, 494, 534), and Bash (732) to be questioned as to whether they would obey ARTA officers rather than officials of the Respondent if orders conflicted.

19. Refusal to permit witnesses Loudermilk (525), Palmer (638), and Bash (730) to be questioned as to whether or not they would actively support a boycott if so requested by ARTA officials.

20. Refusal to permit witness Loudermilk to be questioned as to definition of and attitude toward scabs (539).

21. Refusal to permit witness Palmer to be questioned as to what he knew about financial condition of the Respondent and its published balance sheets (626).

22. Refusal to permit witness Bash to be questioned as to his feeling toward Mr. Stone (734, 737).

23. Refusal to permit witness Phelps to be questioned as to whether or not he received gratuities from members of Stock Exchange and split them with Mr. Dewey (835–838).

24. Refusal to permit witness Phelps to be questioned as to reasons for the floor manager of Stock Exchange requesting his discharge (838).

25. Refusal to permit witness Phelps to be questioned as to his attitude toward strike (853).

26. Refusal to permit witness Jorgensen to be questioned as to whether or not he would have attended meeting at ARTA
35 Hall under Union auspices (1386–1388).

27. The admission into evidence of Board's Exhibits Numbers 9, 10, and 18 to 21, inclusive.

28. That statements alleged by witness Rone to have been made by Mr. McLaughlin are binding on the Respondent because of Mr. Laughlin's position as a supervisor (141, 154).

29. Refusal to strike out wholly unresponsive and non-explanatory answer by witness Rone to question on cross-examination (303, 304).

30. Exclusion of a series of questions as to witness Rone's activities during term he served in jail (316–318).

31. Limitation of cross-examination of witness Palmer as to extent of boycott against the Respondent (646, 647).

32. Limitation of cross-examination of witness Palmer as to his opinions about scabs (649–652).

33. That attorney for the Board was entitled to cross-examine witness Hatch (1067–1069, 1070, 1072, 1074, 1077, 1083, 1094, 1095).

34. That testimony of various witnesses for the Board as to statements alleged to have been made by Messrs. McLaughlin, Buckley, Spanover, Burtz, and Hatch are binding on the Respondent.

Dated New York, N. Y., January 14, 1936.

Respectfully submitted.

J. HAROLD MERRICK,
Attorney for Respondent,
Office & P. O. Address, 67 Broad Street,
Borough of Manhattan, New York City.

36 Before National Labor Relations Board

Case No. C–16

IN THE MATTER OF MACKAY RADIO & TELEGRAPH COMPANY A CORPORATION AND AMERICAN RADIO TELEGRAPHISTS' ASSOCIATION, SAN FRANCISCO LOCAL NO. 3

Decision

Statement of Case

On October 15, 1935 American Radio Telegraphists' Association, San Francisco Local No. 3, filed with the Regional Director for the Twentieth Region a charge that the Mackay Radio and Telegraph Company had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935. On November 9, 1935, the Board issued a complaint against the Mackay Radio & Telegraph Company, hereinafter referred to as the respondent, said complaint being signed by the Regional Director for the Twentieth Region and alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act. In respect to the unfair labor practices, the complaint [1] alleged, in substance:

1. The respondent, through its agents and employees, during the period approximately October 7, 1935 to October 10, 1935, refused to reemploy A. B. Loudermilk, P. D. Phelps,[2] L. K. Bash, L. N. Rone and G. E. Palmer, operators employed by the respondent at its San Francisco office, for the reason that each has joined and assisted a labor organization known as American Radio Telegraphists' Association, San Francisco Local No. 3, said refusal being contrary to Section 8, subdivision (1) and (3).

[1] The complaint was amended during the hearing on the case so as to make a few of the allegations conform to the proof there adduced. The respondent acquiesced in these amendments.

[2] Erroneously referred to in the complaint as "P. K. Phelps."

2. The respondent, by its agents and employees, during the period approximately October 7, 1935 to October 10, 1935, did initiate and form a labor organization or plan and did dominate and interfere with the administration of said labor organization or plan and contribute financial and other support thereto contrary to Section 8, subdivisions (1) and (2).

The complaint and accompanying Notice of Hearing were served on the parties in accordance with Article V of the National Labor Relations Board Rules and Regulations—Series 1. The respondent filed an answer to the complaint admitting the allegations regarding the nature of its business but denying the allegations with respect to the unfair labor practices. Commencing on December 2, 1935, and concluding on December 20, 1935, a hearing was held at San
37 Francisco, California, by Henry Eickhoff, Jr., the Trial Examiner designated by the Board, and testimony was taken. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties. The respondent at the outset moved to dismiss the complaint on constitutional grounds. It then participated in the hearing and at the close of the Board's presentation of evidence moved to dismiss the complaint on the ground of failure of proof. This motion was denied.

On December 19, 1935, the Board, pursuant to Section 35, Article II of its Rules and Regulations, directed that the proceeding be transferred to and continued before it. The Board denied a motion by the respondent to submit the case to the Trial Examiner with directions that he prepare and file an intermediate report. On January 20, 1936, counsel for the respondent pursuant to his request orally argued the case before the National Labor Relations Board, all members being present. Upon the entire record in the case, including the stenographic transcript of the hearing, the documentary and other evidence received at the hearing, the briefs submitted, and the oral argument, the following findings of fact are made.

Findings of fact

I. Mackay Radio & Telegraph Company

The Mackay Radio & Telegraph Company is a California corporation engaged in the receipt and transmission by telegraph, radio, and cable of national and international communications. Its principal office on the West Coast is in the city of San Francisco, and it has other offices in Oakland, Los Angeles, and San Diego, California; Portland, Oregon; Seattle and Tacoma, Washington; Honolulu, Hawaii; and Manila, Philippine Islands. In the course and conduct of its business at these offices the respondent receives and transmits telegraph, radio, and cable messages from and to states and territories of the United States, including the State of California, and foreign countries. Its business is thus that of the continuous trans-

mission of intelligence among the states of the United States, its territories, and foreign countries by means of a highly developed and integrated communications system. The respondent maintains an operating office in San Francisco, which in Mackay parlance is known as the HB office, and also a branch office in the Stock Exchange Building. Some of the circuits operated at the HB office are as follows: San Francisco to Los Angeles, San Francisco to Portland, San Francisco to Seattle, San Francisco to Honolulu, San Francisco to New York, San Francisco to Tokio, San Francisco to Shanghai. The radio and telegraph operators employed at the HB office are the persons who receive and transmit messages on these circuits.

The vice-president in charge of operations for the respondent is Ellery Stone, whose office, and that of the President, is in New York City. H. L. Rodman is the General Superintendent of the respondent and is actively in charge of its operations on the Pacific Coast. Stone and Rodman are in daily communication with each other regarding the operating problems of the respondent. The Secretary of the respondent, Captain Edwin H. Dodd, who has his office in San Francisco, is Rodman's assistant for traffic operations and is also the purchasing agent. Andrew Jorgensen is the traffic manager in immediate charge of the HB operating force and reports to Captain Dodd. He has authority to hire and discharge operators and exercises daily supervision over the men. Three or four supervisors assisted Jorgensen in the conduct of the HB office. The Metropolitan manager for San Francisco is F. L. Dewey, who is in charge of the commercial side of the work and the solicitation of customers. He supervises the Stock Exchange office.

38 ## II. The Formation and Activity of the San Francisco Local of the American Radio Telegraphists' Association

A. FORMATION AND ACTIVITY OF THE LOCAL

The American Radio Telegraphists' Association, hereinafter referred to as ARTA, is a nation-wide labor organization which numbers radio operators among its members. The San Francisco Local of this organization, hereinafter referred to as the Local, was organized in the early part of 1934. The Local was divided into two divisions, one composed of the marine radio operators and the other of the land or point to point operators. The point to point division was divided into three groups, each composed respectively of all those members who were operators employed by one of the three large communications companies operating on the Pacific Coast. One of these three groups was thus confined to the operators of the respondent employed in its San Francisco offices.

The number of respondent's operators who were members of the Local grew steadily in the ensuing months. As the Local thus increased in strength it commenced to negotiate with the respondent. In June 1934 a committee from the Local representing the Mackay

group therein met with Tuel, then vice-president of the respondent, to discuss its demands for increased wages and certain working conditions in the HB office. Some of these demands were granted; final decision on the others was postponed until January 1935 at the respondent's request and then they were refused.

In September 1934 the San Francisco Local sent one of its members, Loudermilk, to New York for about a month to aid in the ARTA organization of the Mackay operators in that city in an attempt to prevent undermining of the San Francisco wage scale by payment of a lower scale in New York. In February 1935 an Administrative Committee of the Local was appointed for the purpose of contacting all of the operators in the Mackay system,[3] ARTA members and nonmembers, to ascertain their views on wages and working conditions. A lengthy questionnaire which covered these matters in detail was sent to the Mackay operators. After the receipt and compilation of this material, members of the Local prepared a general agreement concerning wages and working conditions for the entire Mackay point to point system. This agreement was sent to all of the ARTA locals and ratified by them. It was then presented by the national officers of ARTA to the Mackay officials in New York in June 1935. They requested and were given more time in which to consider the agreement in view of contemplated bankruptcy proceedings that might affect the Mackay companies. The agreement was again presented in September 1935. The national officers of ARTA had requested that the Local send O. M. Salisbury to New York to assist them in the negotiations since they were not too familiar with point to point conditions. Salisbury, who was chairman of the point to point division of the Local and an operator employed in the HB office, went East for this purpose. He was given a leave of absence, the reason for the trip being clearly understood by the respondent. At the same time, at a meeting of the Local held prior to September 1935, the members voted in favor of a strike if such action became necessary to support their demands.

The marine operators had also presented the Mackay companies with a system agreement. On September 13, Salisbury wired Bash, who was chairman in his place, that while the Radio Corporation of America had signed such a marine agreement, Mackay had refused and was recommending non-ARTA marine operators to the steamship companies. He suggested a special meeting to consider joint action on the two agreements. Rathborne, Secretary of the Local, Bash and Russ, who was marine superintendent of the respondent, conferred that morning on the question of recommending non-ARTA

[3] The Mackay Radio & Telegraph Company of California, the respondent herein, is a subsidiary of a Massachusetts voluntary trust having the name "Mackay Companies." More than 99% of the preferred and common stock of that trust is owned by the Postal Telegraph and Cable Corporation, a Maryland corporation, all of whose common stock, is owned by the International Telephone and Telegraph Corporation. There are a number of Mackay offices in the Eastern and other portions of the United States which are operated by the Mackay Radio & Telegraph Company of Delaware. Stone is also the vice-president in charge of operations for the Delaware concern. The term "Mackay" when used in the decision, unless the context indicates the contrary, refers to the entire Mackay system and thus includes all of the officers and operators in that system.

operators but reached no agreement. Stone, the new vice-president in charge of operations for the respondent happened to be in San Francisco that day. In the afternoon a number of marine
39 operators and ARTA members of the point to point Mackay group of the Local conferred with Stone. The marine agreement was discussed to some extent, Stone pointing out defects in the agreement RCA had signed. The point to point ARTA operators stated that they were considering joint action on the two agreements. Stone replied that he was taken by surprise and requested time to return to New York to study the point to point agreement. The request was granted. That evening a joint meeting of the marine and point to point members was held and a resolution adopted to the effect that the two divisions should unite for joint action on the two agreements, so that one could not be adopted to the exclusion of the other, and that the Mackay officials should have until September 23 to execute the agreements unless the ARTA officers negotiating such agreements believed negotiations were proceeding in a satisfactory manner. The vote was overwhelmingly in favor of the resolution, only three or four voting against it. In view of the strike vote taken at the meeting prior to September 1, the action taken at the September 13 meeting was really the fixing of a deadline at which the ARTA officers could call a strike if they deemed one necessary. At this time nearly all of the HB operators were members of the Local. As the ARTA admitted supervisory officials to membership, some of the supervisors in that office were also members.

B. THE OCTOBER 7–8 STRIKE

On October 4 the ARTA negotiators in New York decided that a strike was advisable in view of the unsatisfactory state of the negotiations. Salisbury telephoned the local and a meeting of the point to point group was held that evening. The strike had been set for 12 o'clock midnight, San Francisco time, and was to be nation-wide over the Mackay system. A strike committee for San Francisco was appointed at the meeting. At midnight all of the HB office force then on duty went on strike, with the exception of the official in charge. The strike was conductive in an aggressive fashion. Picketing was commenced and continued during the entire strike, but in a peaceful fashion. With the exception of one or two men, the entire force, including the supervisors, joined in the strike. They were joined by the men at the nearby transmitting stations at Palo Alto and Lobitos.

Elsewhere the strike was not so successful. It was planned and called on a nation-wide basis but the response varied. The strike at Seattle lasted for only a few hours. Only one man went on strike in Los Angeles. No one walked out at the Mackay offices in Washington, D. C.; New Orleans, Louisiana; West Palm Beach, Florida, and Rockland, Maine. A few went on strike in Chicago but their action was ineffectual. In New York the operators remained on

strike for a few hours but by October 5 most of them had returned to work. However, the men in the New York receiving and transmitting stations remained on strike for a longer period. Only at Portland, Oregon, was the strike as effective as at San Francisco.

The respondent immediately concentrated its facilities in an attempt to reopen the San Francisco office and maintain its communication channels. The transcontinental operations were to be continued by relaying messages through Los Angeles. The coastwise service was being handled on Morse wires leased from another company. The respondent could thus dispense with radio operators on these circuits. However, radio operators were needed to maintain the trans-Pacific circuits. The respondent decided to meet this problem by having employees transferred from other stations, and operators from the Los Angeles office were dispatched at once to San Francisco. On Monday, October 7, a plane left New York with seven operators from that office. Two more operators were taken on the plane at Chicago.

40 Strike enthusiasm was maintained in San Francisco throughout Saturday and Sunday, October 5 and 6. But Monday brought discouragement and the ranks commenced to waver. Disheartening rumors were prevalent—the respondent was going to abandon the coast-wise circuits entirely, the New York operators had let them down, and so on. The men knew of the presence of the "strikebreakers" from Los Angeles and of the plane that was bringing more from the East. At a meeting held in the ARTA hall Monday afternoon some of the members——McLaughlin, a supervisor, and Spanover, an operator—urged the men to return now to save their jobs. Only the persuasion of more militant voices prevented a decision then and their to abandon the strike. That evening Loudermilk called Salisbury in New York and after a brief discussion of the general situation, advised him to contact Stone next morning to arrange a return to work pending further negotiations. But on Monday night the strike was still on and the question of returning to work at San Francisco had been deferred until the regular morning meeting of Tuesday.

As Hatch, the chief electrician of the HB office and a union member, left the ARTA hall that Monday evening he met Burtz, an operator also on strike. Hatch confided his belief that the strike was lost and suggested that they call Jorgensen, the traffic manager and the person in charge of the HB operating room, to see if the men could return to work. Burtz agreed and the two spoke to Jorgensen, who was at the office, on the telephone. This was about ten o'clock in the evening. Jorgensen said that the men could come back of they returned in a body. Hatch then agreed to call the men together if Jorgensen would supply him with a list of telephone numbers and addresses. At Hatch's suggestion it was decided that the three would meet in his apartment at once. Jorgensen arrived in half an hour with a list of the operators in the HB office. He said that certain of the strikers would have to make out applica-

tions for reemployment to be passed on by Stone in New York and proceeded to check eleven names on the list. Hatch referred to the resulting list of eleven as a blacklist, using however a more descriptive but less polite expression. He then suggested that he would at once call the men to a meeting at the Bellevue Hotel and asked Jorgensen to be present to state the company's position. It was understood by all that this was a meeting of the men as HB employees and not as union members—the ARTA was out of the picture for the purposes of the meeting. On his way to the hotel Burtz notified McLaughlin of the meeting.

At the hotel Jorgensen arranged for a suite of two rooms. Hatch and Burtz proceeded to telephone as many of the operators as they could[4]—with an important exception. Hatch decided not to notify the eleven on the special list. He testified at the hearing that as the men at the meeting would have to vote on returning to work without these eleven he thought that their presence at the meeting might be embarrassing. He notified Jorgensen of this decision and the latter acquiesced. In addition, although Jorgensen saw Loudermilk, who was on the list, at the hotel before the meeting had commenced he did not tell Loudermilk that a meeting was to be held. Jorgensen in the meantime had arranged for a detail of police to be present at the hotel in case trouble arose.

It was now about 2 or 3 A. M. in the morning. At about 4:30 A. M., when 36 operators had finally arrived, the meeting got under way. Hatch nominated Burtz for chairman but Burtz declined. Hatch then nominated McLaughlin and upon his acceptance the men confirmed the choice. McLaughlin stated that he understood the meeting was called to decide whether the men desired to return to work. He then called on Jorgensen to state the company's position.

41 Jorgensen who had been standing in the next room near the open doorway between the two rooms stepped forward. He said that the strike would be forgotten and that all could return to work—with the exception of eleven men who had to file applications for reemployment which would be sent to Stone for approval. The list of eleven was then read twice—York, Palmer, Bash, Salisbury, Rone, Loudermilk, Patterson, Humphries, Dwyer, Westcott, and Haydin.[5] General discussion ensued. Some of those on the list, including Loudermilk, York, Palmer, and Patterson, had heard of the meeting from other sources and were present. Loudermilk pointed out that a vote to return to work would mean the jobs of the eleven on the list. It was finally decided that a two-thirds vote would govern and that the men on the list who were present could vote if they so desired. A vote was taken on the question of whether they should return to work—22 voted yes, 6 voted no, and 8 failed to vote. Jorgensen then in effect said "Let's all go back to

[4] Jorgensen about a week later reimbursed Hatch for the telephone calls. The hotel on December 13 sent a bill for the rooms to Jorgensen as traffic manager of the Mackay Company. The bill had not been paid at the time of the hearing.

[5] This is the probable sequence of the names according to the record. As will be developed later, the main groupings are here important and the above appears accurate in that respect.

work in a body." Most of the men went at once to the HB office and started to work. It was then about 6 A. M. in the morning. The news spread and other men reported to work in person or by phone Tuesday morning. The strike had collapsed in San Francisco. At one o'clock E. S. T. the ARTA vice-president in New York formally notified Stone that the nation-wide strike had been called off.

By late Tuesday afternoon all but four of the striking operators in San Francisco had returned to work. These four were Rone, Palmer, Bash, and Loudermilk. That evening Palmer and Loudermilk applied for reinstatement and the other two made a similar request on Wednesday. All four were informed that no vacancies then existed but that they should fill out applications for reemployment which would be forwarded to Stone in New York. The four filled out applications which read, "please reinstate me in the HB Operating Force in my former position as Class A operator." Jorgensen forwarded the applications to Captain Dodd, his superior, stating:

"This application for employment, together with a number of others, which are being forwarded at the same time, is subject to final approval by Mr. E. W. Stone, Operating Vice-President.

"There are no vacancies in the HB Operating force at present, and there were no vacancies at the time the applicant made his verbal application to me."

The applications were sent by Rodman, General Superintendent for the Pacific Coast, to Stone in New York, stating:

"Forwarded.

"In view of the fact that no vacancies now exist in the HB Operating force it is not recommended that Mr. Palmer be employed as requested by him.

"It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the HB Operating Room."

The applications were returned by Stone to Rodman, stating:

"Returned.

"Your recommendation is approved and there is no objection to favorable consideration being given this application when a vacancy occurs at San Francisco."[8]

42 The applicants were notified of their status. They have not yet been reinstated by the respondent. Jorgensen stated to one of them that he did not believe there would be any vacancy in the HB force at least until the summer of 1936.

III. The Unfair Labor Practices

A. THE DISCHARGES OF THE FOUR HB OPERATORS

The complaint alleges that these four operators were refused reinstatement because of their union membership and activity. The respondent denies this allegation and states that the men were re-

[8] Board Exhibits 4 (Palmer); 11 (Stone); 6 (Bash); 3 (Loudermilk).

fused reinstatement solely because at the times they applied there were no vacancies existing in the HB operating room. To arrive at a decision, we must first consider the chain of events that led to the placing of these men on the list of eleven, the circumstances surrounding their application for reinstatement and the nature of both their work for the respondent and their activities in behalf of the union.

1. The Discharges Separately Considered

Rone.—Rone had entered the employ of the respondent in the spring of 1927 but had later left. He had resumed his connection with the respondent in January 1930 and had been with it ever since. He was a Class A operator on the basis of the respondent's classification system [7] and was earning the top salary of $180 a month for an operator at the time of the strike. He had joined the ARTA Local at the time of its formation and ever since had been an active member and among the leaders in its activities. He was a member of the Administrative Committee which had contacted the Mackay operators as part of the preparation of a national agreement. Moreover, he had contacted the officials of the respondent many times in regard to union matters, including the conferences with Tuel in 1934 and with Stone in September 1935. During the strike he was a picket captain and was active in his duties, at one time visiting two of the supervisors at their homes and obtaining their applications for membership in the Local.

Rone did not attend the hotel meeting. At about seven o'clock Tuesday morning, October 8, he met McLaughlin and was informed by him that the men had returned but that he was on the blacklist. Rathbone, secretary of the San Francisco Local, informed him of conditions in general. Rone told him that he did not think that he, an officer in the Local, should apply for work until the other men had returned. Moreover, he had been informed that he was on the blacklist and thought he would not be reinstated. Consequently, Rone did not apply until about 3:30 o'clock Wednesday afternoon, October 9. Jorgensen then informed him that there were no vacancies and that he would have to sign an application for reemployment, which he then did.

Bash.—Bash had been employed by the respondent since February 1927. At the time of the strike he was a Class A operator receiving $180 a month. He also was a charter member of the ARTA Local and one of its leaders. He was one of the three members of the Grievance Committee, or as it was later called, the Relations Committee of the Local that dealt with the respondent. When Salisbury went East, Bash became chairman of the point to point division in his place. He had participated in the Tuel and Stone conferences and during the strike was active in the picket line.

[7] The HB operators are classified from Class A through Class E. The Class A operators are assigned to those circuits that demand first-class operators and are thus regarded by the respondent at its best operators.

An operator informed him of the hotel meeting and he spoke to Burtz and later to Hatch by telephone at the hotel, both of the calls being made by him. Hatch said that it was an HB employees' meeting on the question of returning to work and that Bash could
43 neither attend nor vote. Whereupon Bash fainted. Next day York informed him of what had happened, stating that both were on the list but that he, York, had been temporarily employed. Bash thought that he would be treated differently from York, since the latter was a supervisor. Bash was too ill to apply for work until Wednesday, October 9, when he saw Jorgensen at about 10 o'clock in the morning. The latter told him that there were no vacancies but that he could fill out an application and he did so. He was employed on a temporary job elsewhere at the time of the hearing and had then earned $200.

Loudermilk.—Loudermilk also was a Class A operator earning the top salary of $180 a month. He had been with the respondent since 1933 and previously had spent seven years with RCA. He was probably the most active ARTA leader in 1934, being chairman of the point to point division and for a time a member of the Grievance or Relations Committee of the Local. He had conferred with Tuel in 1934 and later had made a trip to New York to aid in the organization of the ARTA Local at the office in that city. During this trip he had numerous contacts with the Mackay officials with respect to the conditions at the Chicago and New York offices and the operators there employed. He was not active in 1935 in the relations of the Local with the respondent because of some disagreement with the national officers of ARTA. He was on the picket line during the strike.

Loudermilk attended the hotel meeting. Prior to the commencement of the meeting Loudermilk and Jorgensen had a private conversation in which the former questioned him about the rumor that there was a special list. Jorgensen admitted that, and, when Loudermilk said he assumed he was on it, also admitted the correctness of the assumption. Loudermilk applied for work Tuesday afternoon accompanied by Palmer. They asked to see Rodman between 2 and 3 P. M. but were informed by his secretary that he was out. The other officials were not then in their offices so they left and returned about 5 P. M. Rodman avoided seeing them, telling his secretary he was too busy. However, they decided to wait. By chance, they met with Rodman in his office at about 6 P. M. and applied for reinstatement. Rodman told them they had to file applications which would be forwarded to Stone. Loudermilk asked Rodman what he thought of the chances of Stone's approving his application and he replied that they were not "very good . . . The final decision on your application, and some others, is going to be made by Mr. Stone; and you must remember you have a national reputation. You are known in New York and in Chicago also as being a very active—or something of an agitator." Rodman in his testimony then added "I may have put it a little stronger than that." Loudermilk thought

that he did for he testified that Rodman said, "Well now, Loudermilk, why should he (Stone)—after all, you know you are the real leader—the ring leader of this organization. Why you are the No. 1 public enemy as far as we are concerned, you are the head of the list! Why you have a national reputation for causing us trouble!" After talking with Dodd and Jorgensen, one of whom told them that there were no vacancies, they filled out applications, the time of application being placed at 9 P. M., October 8. At the time of the hearing Loudermilk had earned about $245.99 through employment as a hosiery salesman.

Palmer.—Palmer had been with the respondent since May 1930. At the time of the strike he was a Class A operator receiving a salary of $180 a month. One of the leaders of the Local, he was a member of the Grievance or Relations Committee in 1935 and had often met with the respondent's officials on union matters, including the two meetings with the vice-presidents, Tuel and Stone. He was a member of the Strike Committee and picketed during the strike. He was at the hotel meeting, having been notified of it by an operator. With Loudermilk he applied Tuesday afternoon as described above.

Mention should be made of two of the other men on the list—Salisbury and York. The former was a Class A operator who also was a leader in the Local. He was the chairman of the point to point division of the Local and at the time of the strike was in New York assisting the ARTA officials negotiating with the Mackay officials. He did not apply for reinstatement since he was on leave of absence, but a short time before the expiration of that leave he asked to be permitted to resume his work in accordance with the understanding governing leaves with permission. He was re-
44 quired to answer a series of questions prepared by the respondent's attorney and forwarded to Rodman by Stone. These questions centered about his "loyalty" to the respondent in the light of his union affiliation and his views in regard to working conditions. In his answers Salisbury defended his union activity and stated that the respondent had shown a distinct "anti-labor attitude." But he knew of no reason why he could not give "undivided loyalty" to the respondent unless that term meant that he could not belong to a labor organization. The answers were sent to Stone. A day before his leave expired Rodman recommended to Stone that Salisbury should not be reinstated. Stone, who had the answers by that time, approved the recommendation and Salisbury was discharged. This occurred about the first of December 1935.

York was a supervisor at the time of the strike. He was a fairly active union member, though not as active as the five leaders mentioned above. He was a member of the Administrative Committee and had also participated in the Tuel and Stone conferences. After his return to work he was demoted from supervisor to Class A operator with a $10 reduction in monthly pay. There was apparently one more supervisor than was needed after the strike and York was

the supervisor who was demoted although he was next to last on the seniority list of supervisors.

Returning to the above five operators on the list, Rone, Palmer, Bash, Loudermilk, and Salisbury, the first four of whom are involved in the complaint in this case, we find that all are Class A operators. At the time of the strike, Loudermilk, Rone, and Palmer were working on the San Francisco-New York circuit and Bash was on the San Francisco-Honolulu circuit. All five were efficient employees. Captain Dodd testified that of the five, Rone, Palmer, Salisbury, and Loudermilk were good operators and Bash was fair but not in their class. Jorgensen said that these five were among his best operators, although he likewise thought Bash was not as capable as the others. McLaughlin, who supervised Bash, thought that he was a first-class operator. At no time during the strike and in the period following it was their efficiency questioned. This group of five were the unquestioned leaders of the Local and its most active members. Their leadership and activity had become known to the respondent through repeated contacts with its officials.

2. The Respondent's Testimony Regarding the Chain of Events Preceding the Discharges

On Sunday, October 6, Rodman, General Superintendent of the respondent and in charge of operations on the Pacific Coast, conferred with Captain Dodd, the Secretary of the respondent and assistant to Rodman in charge of traffic operations. Rodman said that Stone had informed him that seven Mackay operators from New York and two from Chicago were to be sent to San Francisco. Any of these operators and any of the Los Angeles operators then in San Francisco who desired to remain permanently in San Francisco were to be allowed to do so pursuant to Stone's instructions. Rodman thought two of the Los Angeles operators desired to remain. Under these circumstances the belief was expressed that certain of the San Francisco operators would not be taken back when the strike was over.

On Monday afternoon, October 7, Rodman conferred with Jorgensen, who was in charge of the HB operating room under Dodd and Rodman. Rodman repeated to him what he had told Dodd the previous day. If all of the nine from the East remained in addition to the two from Los Angeles the HB office would not be overstaffed unless some of the San Francisco operators were not reinstated. Rodman stated: "Jorgensen, in such a case we will first take back the men that are most desirable, or most satisfactory to the company." The men in the HB room were then discussed for about an hour, their qualifications, operating ability, and general desirability being considered. Rodman thought Jorgensen had a clear understanding as to which of the operators were most desirable to the respondent but he took pains to impress upon him the idea that in deciding which men to reinstate, careful thought should be given to

their general desirability and "overall general satisfaction" to the respondent as distinguished from their mere operating ability. No specific men were agreed upon but Rodman was "sure" Jorgensen understood him.

45 At about ten o'clock Monday evening Jorgensen received Hatch's phone call. He asked Hatch to wait and at once went into Rodman's office and asked "if the men should want to return to work, should I take them back"? Rodman replied, "By all means. But remember, you are to take care of the men from New York and Los Angeles, but handle that in your own way." Jorgensen realized that he had to provide jobs for eleven men if the nine from the East decided to remain in San Francisco in addition to the two from Los Angeles. He decided to choose eleven of the San Francisco operators to whom only temporary employment would be given when the strike was over. If all of the eleven transferred operators decided to remain in San Francisco, these eleven San Francisco operators would have to be dropped. If only a few of the eleven chose to remain, then only a corresponding number of the San Francisco operators would not be reinstated and the temporary status of the remaining operators on the list of eleven would be changed to permanent employment. Those to be dropped in that event would be carefully selected from the entire list of eleven. In other words, the crux of the problem was the uncertainty as to the number of transferred operators that would remain. Since the total number transferred was eleven, Jorgensen decided that he must be prepared for the contingency that all might stay and hence to avoid the embarrassment of permanently reinstating some San Francisco operators and then being forced to drop them, he determined to give a temporary status to an equal number of San Francisco operators. But since it was more than possible that some of the transferred operators would not stay, as had been the case with the Los Angeles contingent, there would remain the problem of correspondingly paring down the list of eleven. This problem Jorgensen decided to leave for the future when the number became certain—he would then weigh each man on the list of eleven and only after such deliberate consideration would he determine whom to keep and whom to drop. This immediate concern was the list of eleven and to this task he turned his attention. He had only a short time—for he met Hatch in half an hour. It was too short a time to enable him carefully to consult the seniority list or the "error" list containing the number of errors per operator. But he had discussed the men with Rodman that day and he had been told that he was to pick those most desirable to the respondent on an "all things being considered" basis. So hurriedly he chose the eleven whom he thought least desirable and then went to Hatch's house. There he marked them off on the list of the entire force.

Jorgensen testified that when he read the list of eleven at the hotel meeting and stated the restrictions applicable to those on the list he intended to convey the thought that all of the eleven were to return to active work at once along with the other men, but that

their reinstatement would be temporary for a while. They would of course have to fill out applications to be passed on by Stone in New York. Jorgensen said he thought of Stone in this connection because it was Stone who had issued the orders in regard to the transferred operators. Moreover, since Stone was in charge of personnel for the entire Mackay system, including the California corporation operating on the Pacific Coast and the Delaware corporation operating elsewhere in the United States, he might be able to transfer some of the San Francisco operators who otherwise would have been dropped from the respondent's employ. But approval by Stone of an application for reemployment was not intended to be a condition precedent to such temporary return to work. Rather consideration of the application was to operate as a condition subsequent after all the eleven had returned on such a basis. Such were Jorgensen's intentions and such was the thought he intended to convey. However, he merely told the men at the meeting that they could return to work with the exception of eleven who would have to fill out applications for reemployment to be approved by Stone.

As described above, the operators returned to work Tuesday, starting at about six in the morning. Some of those on the list of eleven returned with the group at the hotel. At about 10:30 A. M. Jorgensen went home for some sleep and Captain Dodd relieved him. Dodd had learned about the list of eleven only that morning. The plane from the East had arrived that morning and had been met by Rodman and Dewey, the respondent's metropolitan manager for San Francisco. By 4 o'clock that afternoon 64 of the San Francisco operators had reported for work. Dodd knew then that only one of the Los
46 Angeles men preferred to remain. He spoke to the two Chicago men and they expressed a desire to stay. Stone had informed him that two and possibly three of the New York men would stay—which would make in all 69 operators at least. Prior to the strike only 68 had been employed. Dodd decided to "close the books" and so reported to Rodman. He told him of the list and of which men had not as yet applied—Palmer, Rone, Bash, Loudermilk. Rodman at once called Stone in New York and described the situation, informing him that the full complement of operators had been reached and of the four, by name, who had not as yet applied. He discussed those on the list of eleven who had returned and recommended that their reinstatement be confirmed on a permanent basis as there were no serious objections to them and they were "generally speaking, good operators." Stone approved this recommendation and the method that had been adopted in the reinstatement of the men. He told Rodman to forward to him the applications of those who had not returned. Stone later told Rodman to have applications filled out by everybody in view of the temporary severance of employment caused by the strike and this was done. When Jorgensen returned that evening Dodd informed him that all the vacancies had been filled. Only after the books had thus been closed, between 4 and 5 o'clock on Tuesday afternoon, did the remaining four operators

apply for reinstatement. In the end five of the eighteen transferred operators remained in San Francisco, one of them being given a position outside of the HB operating room.

3. Consideration of the Reasons for the Discharges—Conclusion

I

The respondent contends that the four operators not reinstated were denied reinstatement solely because there were no vacancies when they applied to the respondent.[8] While it is true that no vacancies then existed, the lack was due to the fact that the respondent had decided to employ at San Francisco four operators not previously employed at that office. These men, transferred from employment at other points, were really strikebreakers. The respondent is therefore contending that such strikebreakers are entitled to the four positions in question in preference to the men who had held them at the time the strike had commenced and who because of union activity has temporarily severed their active work on those jobs but not their status as employees of the respondent. See Section 2, subdivision (3) of the National Labor Relations Act. It might be argued by these four operators that the granting of such a preference to the strikebreakers was a discrimination in regard to tenure of employment of the type forbidden by Section 8, subdivision (3) of the Act and that therefore their claim under the Act to the four jobs is greater than that of the strikebreakers. However, since we find that a decision on the point is not necessary to the final judgment in this case, we will not decide the matter. Instead, we assume merely for the sake of argument that the respondent was entitled to retain these strikebreakers and that such retention was not a discrimination within the meaning of Section 8, subdivision (3). But as a consequence of such retention it became necessary to refuse reinstatement to four of the San Francisco operators employed at the time of the strike. In choosing the four to be in effect discharged, the respondent could not violate the provisions of Section 8, subdivision (3) and consequently a choice based upon discrimination for union membership or activity within the meaning of that sub-
46 division would be unlawful. Thus the controlling question in this case is whether the respondent obeyed the mandate of that subdivision in the method it adopted and in the selection it made. In this connection it must be noted that the mere fact that the four operators are union members is not significant since in view of the almost 100% membership of the HB force, any four even if picked at random would be union members. But here the respondent has chosen the four leaders of the Local and it is that choice which is alleged to be a violation of the law.

[8] Although the respondent fixed the time of application for Loudermilk and Palmer at 9 P. M., October 8, it should be noted that these two operators had attempted to see Rodman between 2 and 3 P. M. that afternoon and hence prior to the "closing of the books." While the disregard of that factor by the respondent is to some extent indicative of its attitude toward these men (compare the discussion infra concerning Phelps), we have accepted the time of application stated by the respondent for the purpose of the discussion in the text.

The respondent asserts that the fact that the four not reinstated happen to be the leaders of the Local is entirely an accident and due to the fact that they were the last to apply, and only did so after the deadline in numbers had been reached. If they had been among the first to apply they would be employed today. Time and not the respondent picked the leaders of the Local.

The difficulty with this contention is that it was the respondent who chose the standard of time. And, significantly, it not only chose that standard on Tuesday afternoon at a time when the four leaders had not as yet reapplied but it deliberately shifted to that standard at that point. Whatever may have been the reasons for selecting the eleven who made up the list which Jorgensen read to the gathering at the hotel, and we will discuss that point later, it is clear that Jorgensen at that stage had not even considered the question of the time of application as being at all significant. If only some of the eleven eventually had to be dropped he then intended to select them only after a careful weighing of each employee on the list. But he testified that it was not to be a case of "first come, first served." Moreover, the very existence of the list was foreign to such a standard. Jorgensen and not Time was to do the selecting. But on Tuesday afternoon coincident with the realization that the full quota had been reached and still the union leaders were as yet not reinstated, there was a shift to the time standard and the "first come, first served" rule was adopted for the first time. The four to be dropped were now the last four, whose identity was then known, to apply—not the four whom Jorgensen would decide were the least efficient of the entire eleven. The list was in effect discarded. The inference seems clear that the respondent's officials readily perceived that circumstances had provided them with an excellent opportunity to rid the respondent of the leaders of the Local which had just caused it to pass through a costly strike and it did not fail to make the most of the opportunity. And in thus taking advantage of that opportunity the respondent committed a violation of the Act.[9]

II

Our decision, however, need not rest on the above ground alone. For the moment let us assume that in applying the "first come, first served" rule until the HB quota was reached the respondent was not acting contrary to the Act insofar as the mere application of such a standard is concerned. Under such an assumption the failure to reinstate the last four to apply would not be a violation of the Act even if the four happened to be the leaders of the Local, unless some activity of the respondent was responsible for their being the

[9] We here accept in full for the sake of argument the respondent's contentions and testimony that on Tuesday afternoon it did decide to follow a time standard and on the basis of that testimony arrive at the above conclusion. However, we are by no means convinced on the record before us that the respondent fully thought out all of these contentions on or before that Tuesday. There are statements scattered throughout which indicate that the "plan" may have been evolved in its entirety only after the deliberate decision to refuse to reinstate these men for union activity and the consequent actual refusal.

last to apply and such activity was motivated by a desire to discriminate against them because of their union leadership. Translated to the facts in this case, if the respondent placed these four men on the list of eleven because of their union leadership and activity and if the presence of their names on that list led them in the final analysis to be the last to apply for reinstatement, the respondent in then applying the "first come, first served" rule would be acting contrary to the Act.[10]

48 We first address ourselves to the specific reasons advanced by Jorgensen to explain his choice of the eleven men on the list. In his testimony the following reasons were stated:

York (Supervisor).—In view of certain remarks directed against respondent's officials during the strike, his loyalty to the respondent was doubtful and therefore he was not suited to a supervisor's job; moreover, Jorgensen felt a supervisor should not strike.

Palmer (Class A Operator).—Talked over the telephone and to other operators while working, read while working, all in violation of the respondent's rules.

Rone (Class A Operator).—Left circuit without permission and spoke to other men, although not reprimanded personally for such conduct.

Loudermilk (Class A Operator).—About the same reasons as in Palmer's case; in addition these three operators were not amenable to discipline.

Bash (Class A Operator).—On one occasion was insubordinate, seemed preoccupied with other work, worked cross-word puzzles, talked to other operators.

Salisbury (Class A Operator).—Had violated his leave of absence to engage in "welfare work" in behalf of the respondent by negotiating on ARTA matters.

Patterson (Class B Operator).—Had several bad errors on his record made in connection with the work of a customer the respondent was very anxious to retain.

Humphreys (Class B Operator).—A "very poor tape operator"; while a good manual operator had not come up to expectations as a tape operator.

Westcott (Class C Operator).—Had "many times" failed to show up for work because of being under the influence of liquor.

Dwyer (Clerk on night trick).—Many complaints received from night supervisor; "always" late for work, didn't heed admonitions.

Hardin (Temporary student operator—Class E).—He would never be a good operator and had made many errors.

It should be noted that the only Class A operators chosen were the leaders of the Local. The last five listed above were not at all active in union matters and the reasons advanced by Jorgensen appear to be genuine and definitely related to efficiency as an operator. Hardin

[10] We have not considered the question of whether the mere placing of these men on the list of eleven because of their union leadership and activity would in itself be a violation of the Act, since such consideration is not necessary to a decision in this case.

was permitted to resign on Tuesday instead of being discharged, since Jorgensen did not want to handicap him with a bad record. But the reasons advanced in the cases of the five Class A operators are of a different nature. At best they seem but carefully recalled petty infractions of working rules which nearly every employee is likely to commit over a long period of employment and which are nearly invariably condoned by the company.

And in the case of Salisbury the reason is obviously a sham. Jorgensen knew that Salisbury went to New York for the sole purpose of assisting in the ARTA negotiations and that the descriptive term "welfare work" was probably used merely to embellish
49 the respondent's records. While York was not as active a union member, it was his active participation in the strike in conjunction with his status as a supervisor that appears to have caused his selection. His case is thus different from that of the five Class A operators. Leaving York aside therefore, the list seems to be capable of division into two parts. The last five men appear to have been chosen solely for reasons definitely related to efficiency of operation. The first five of the operators, on the other hand, appear to have been selected because of their leadership and activity in the Local and not because of their inefficiency as operators, especially when it is remembered that at least four of them were admitted to be among the best operators on the force. The large proportion of Class A operators, even aside from the efficiency of the particular men chosen from that Class, is certainly not consistent with an honest endeavor to maintain a high efficiency standard at a time when it is possible for the respondent to weed out its inefficient men. Since only a few of the strikebreakers were Class A operators this proportion becomes more significant. Finally, Jorgensen admitted that he had never laid off four, three—even two Class A operators at one time; he could not remember having laid off a single Class A operator since he became chief operator. The presence of these five on the list is made understandable, however, when we consider Jorgensen's purpose—"I was trying to put men on that list that were the least desirable at that time, to the company, that is, as I saw it," and that these "were the least desirable operators from the company's standpoint, out of the whole group."

The operators recognized the divisible nature of the list. Loudermilk at the hotel meeting asked Jorgensen "what in the world they had eleven men on that list for. I can recognize the company's reluctance to reemploy the five at the head of the list (referring to Palmer, Rone, Bash, Salisbury and himself), but I don't understand why you have these six others on there."

At this point it is necessary to remember that more than a Local of a union is involved. The San Francisco Local of the ARTA was the strongest in the Mackay system for it had succeeded in obtaining as members practically all of the force at the San Francisco office. Because of its strength and active leadership it was the dominant Local in the ARTA and in effect the center of ARTA activity. It

had prepared and sponsored the agreement for the entire Mackay system and through Salisbury was pressing for its adoption. Consequently, in its attempt to deprive this Local of its leaders the respondent was in reality striking effectively at the national organization. We conclude that the four operators in question were placed on the list because of their union leadership and activity and therefore turn to the effect of that list upon the actions of the men named thereon.

Jorgensen, as stated above, testified that it was his intention to have the eleven return to work with the others on a temporary basis. But his actions and words were ill-chosen, to say the least, to communicate that intention. He knew that the eleven were not to be notified of the meeting and did not protest. The presence of some of those on the list was accidental. When called upon to state the respondent's position Jorgensen merely said that eleven would have to submit their applications for reemployment and the applications would have to be approved by Stone. He made no reference to an immediate return to work on a temporary basis. Even if it be conceded that he could reasonably have thought that the above words adequately expressed his intentions, one would expect that if the reaction of those present indicated a complete misunderstanding of his remarks he would have taken the trouble to correct that impression. There is not much doubt as to what the reaction was. Loudermilk told the operators at the meeting that the vote was really on the question of whether they were willing to return to work although it meant leaving the eleven out of a job. Later in the meeting Loudermilk told the men not to be influenced by the effect on him—"If you want to vote on it, don't let me stand in your way. If I don't go back, it doesn't make any difference to you"—and Palmer added "That goes for me too." Taking the view most favorable to the respondent, these reactions indicated a not too clear understanding of Jorgensen's intentions. Yet he did or said nothing to clarify the matter, although it is reasonable to assume that the men would have been more willing to return to work if it were clearly understood that all including the eleven could go back at that time.[11]

Two of the men who were on the list and who were present at the meeting testified as witnesses for the respondent. One of these,

[11] Here, and elsewhere, we have for the sake of the argument adopted the version of Jorgensen's statement most favorable to the respondent. Jorgensen's testimony as to his statement is about that given in the text above. Hatch and York testified similarly. McLaughlin's testimony, on the other hand, although in some respects verbally similar to Jorgensen's, indicates that Jorgensen was very far from expressing his professed intentions. McLaughlin testified: "He told them that they could return to work unconditionally; that they would retain their former positions, capacities, and that the strike would be forgotten. And then he had a piece of paper in his hand and he said, '*Excepting* those names,' and he read them off and said 'These men will have to submit an application for reinstatement.'" [Italics ours.] Patterson, who like McLaughlin, was the respondent's witness, testified that Jorgensen said that the eleven men "would not be allowed to return to work until their applications were approved by Mr. Stone." Chambers, an operator, testified similarly, stating that Jorgensen, after reading the list said "Any man to be reemployed will have to submit his application to Mr. Stone." Finally, both Loudermilk and Palmer testified that McLaughlin prefaced Jorgensen's remarks by stating, "Mr. Jorgensen will read to you the list of men who are banned from returning to work" (Loudermilk; Palmer said: "Men who will not be taken back to work"). Palmer's testimony in regard to Jorgensen's statement is similar to that of McLaughlin.

Patterson, testified that after the meeting while he was standing in the hotel lobby Jorgensen told him to come down with the rest. He therefore went to the HB office, but he said that he thought he had been asked to go there for the purpose of filling out an application and added "I didn't have any idea that I would be allowed to go to work." For it was his understanding that those on the list would have to fill out applications and if they were approved they could then return to work—he did not understand that if he went back to the office he would be immediately put back to work at least on a temporary basis. At the office Jorgensen told him to go to work at once and only a day or so later did he fill out his application. The other, York, testified that after the meeting he went to the HB office to fill out an application since as no time was set, he "thought then was as good as any." He did not know what his status was and he went to find out. At the office he first asked Jorgensen for an application and the latter replied he would get him one in a day or so but that now now he should commence to work.

The evidence of Patterson and York indicates that they certainly did not believe they could return to work at once even on a temporary basis. It must be remembered that these two—and especially Patterson—were in the dark as to the respondent's motive for placing them on the list. But when we consider that the four union leaders had every reason to believe that they were being blacklisted for union activities, it is but natural to expect that they certainly would not think they could return to work at once if a person such as Patterson, with no inkling as to the respondent's motive, held the same belief as to himself.

The four in question thought they would not be permitted to return to work and under the circumstances described above such a belief was not unreasonable. Holding that belief, it was natural that they would delay their request for reinstatement. Bash would not feel that there was any reason to rise from a sick bed and apply. Rone could wait for all of the men to return to work before he himself applied without being forced really to choose between his conscience and his job. These four were induced to postpone their applications because of the reasonable belief that they would not be permitted to return to work and that belief was planted in their minds by conduct of the respondent directed against them because of their union activities. To apply the "first come, first served" principle to these four operators under these circumstances constituted a violation of Section 8, subdivisions (1) and (3).

51 B. THE DISCHARGE OF PHELPS

The fifth employee whom it is alleged the respondent refused to reinstate contrary to the Act because of union membership and activity is Phelps. He had been with the respondent since June 1928 and at the time of the strike was the manager of its branch office in the Stock Exchange Building in San Francisco, earning $169.60 a

month. Working under him were an operator and one or two telephone girls and clerks. One of the main duties associated with his position was the solicitation of customers, especially those concerns that were members of the Stock Exchange. His immediate superior was Dewey, metropolitan manager for the respondent, who in turn reported to Rodman.

Phelps had joined the Local in the spring of 1934, but was not active in its affairs. Although he was present at the meeting on October 4 at which the strike was announced, he reported for work Saturday morning, October 5. He spent that morning in efforts to placate the regular customers of the Stock Exchange branch, requesting them to bear with the respondent until the present difficulties were straightened out. After he closed the office at noon, he discussed the situation with several of the strikers and decided to join the strike. The Stock Exchange office was normally closed on Saturday afternoon and Sunday. Phelps was not active on the picket line, although he did accompany Rone and another operator when they visited the homes of two of the supervisors to obtain their membership in the Local.

Phelps was not informed of the meeting at the hotel, probably because he was in a different office and hence was overlooked, and did not attend it. On Tuesday morning, October 8, he learned that the strike was over by calling the headquarters of the Local. This was about 7 P. M. He immediately called Dewey at his office, but he apparently was not there. Phelps then at once went to the Stock Exchange office, but was denied admission by the guard, who had previously been told not to admit anyone and whose instructions had not as yet been changed. He next attempted to see both Dewey and Rodman at about 8 A. M., but was informed both were out. At about 9 A. M. he succeeded in seeing Captain Dodd. He inquired of Dodd about his status and Dodd replied that he did not know but would attempt to find out from Rodman that morning and hence Phelps should come back about 1 P. M. Phelps sat outside of Dewey's office until that time and then spoke to Dodd again at 1 P. M. Dodd said he had spoken to Rodman, but had forgotten in the press of things to mention his case and suggested he return at 3 P. M. Phelps did so and on opening the door at that time was met by Rodman who, in an excited mood, told him to "Get out." Phelps left and finally contacted Dewey at the Stock Exchange office at about 3:30 P. M. Dewey said the matter was out of his hands, and that he had better file an application. Phelps did so and saw Dewey the next day. Dewey then informed him that the managership of the Stock Exchange branch had been given to Duggan (or Dugan), one of the transferred employees from New York. On October 14 Phelps wrote Rodman requesting a meeting in order to explain the situation. Rodman saw him the next day and stated that his position had already been given to Duggan but that he would recommend his reinstatement to some position.

Phelps in the meantime had visited the Regional Office of this Board preparatory to the filing of a charge. The next day, according to Phelps' testimony, Dewey informed him that Rodman did not want to recommend his reinstatement, in view of his visit to the Regional Office. Phelps then attempted to withdraw his "complaint," but was informed by the Regional Director that it had been filed by the Local and not by him. However, he was told, if he were reinstated he would be dropped from the complaint. Phelps so informed Dewey. Rodman finally sent the application to Stone with the recommendation that Phelps should not be employed as there were then no vacancies in the Stock Exchange branch. This recommendation was approved and Phelps was not reinstated. Since that time Phelps had earned about six dollars as a hosiery salesman.

Conflicting testimony was offered at the hearing in regard to Phelps' efficiency. Letters were introduced in the record from various members of the Stock Exchange who were customers of the respondent, including the president of the Exchange, which
52 testified to his ability and his qualifications for the position of manager of the Stock Exchange branch. While the respondent's officials testified on the other hand that they had once in June or July 1935 received a complaint which would have justified his being discharged, they had not taken such action, so that Phelps was still an employee at the time of the strike. Such retention is significant and we therefore conclude that on the whole record Phelps cannot be considered as either an inefficient employee or one whom the respondent regarded as too inefficient to retain his job.

The respondent at the hearing and prior thereto contended that Phelps was not reinstated because at the time he made application his position had already been filled. No claim of inefficiency was presented.[12] The respondent's officials testified that about noon on Tuesday, October 8, Dewey had given the position of manager of the Stock Exchange branch to Duggan, one of the employees transferred from New York, who up to then had been only an operator. The respondent set the time of Phelps' application for reinstatement at 2:30 P. M., October 8, when he first contacted Dewey.

We cannot accept the respondent's contention. Phelps was an employee on the pay roll of the respondent at the time of the strike. After the strike was over he was not reinstated and a new employee was given the position at noon on Tuesday. Yet, Phelps had con- New York office before that time and the position had not been promised him when he transferred from New York. Moreover, he was given the position at noon on Tuesday. Yet Phelps had contacted a responsible official of the respondent and applied for rein-

[12] Nor was it contended, in explaining the refusal to reinstate, that Phelps had been guilty of conduct during the strike which would justify the respondent in not taking him back. The record indicates that one of the telephone operators reported to the respondent that she had been forcibly detained from going to work by several of the picketing strikers, including Phelps. While from the record we conclude that the report was false and that the pickets had in no way detained her against her will, since the respondent did not rely upon such report, we need not further consider it or determine whether reliance upon it and refusal to reinstate on that ground would be justifiable.

statement at 10 A. M. that same day after having unsuccessfully attempted to reach some official since 7 A . M.[13] In fixing the time of application of the operators in the HB room the respondent considered telephone calls to Jorgensen and even calls to a supervisor as proper applications. To state that an application made to Dodd, Secretary of the respondent and active in the supervision and conduct of its affairs in San Francisco, was not sufficient and to insist instead that Phelps had to find Dewey, his immediate superior, and make application to him, is to insist so strenuously upon technicalities as to arouse the inference that the respondent is concealing its real motive. It must be remembered that Dewey and Rodman had not remained at their desks that morning to receive applications, but instead had gone to the airport to meet the plane from the East. Under these circumstances, the placing upon Phelps of the risk of failure to contact Dewey, and the prompt installation of Duggan in a position entirely different from the one which he had formerly held, demand a clearer explanation than that offered by the respondent. That explanation, we feel, is linked with the statement of Rodman at the hearing that "we did not approve of a commercial man, in charge of an office, becoming a member of an organization such as ARTA," a belief that did not require further confirmation by the strike and Phelps' participation in it, for with Rodman the belief amounted to a "foregone conclusion." We, therefore, conclude that on the record before us the refusal to reinstate Phelps was a violation of Section 8, subdivision (3), and by the same token, subdivision (1).

53 C. THE ALLEGED VIOLATION OF SECTION 8, SUBDIVISION (2)

The complaint alleges that the respondent initiated and formed a labor organization or plan and contributed financial and other support thereto contrary to Section 8, subdivisions (2) and (1) of the Act. The proof advanced to support these allegations principally concerns the meeting at the hotel, a second meeting of the operators held October 9, and the subsequent signing of a petition renouncing the ARTA. We have already described the hotel meeting and therefore consider now the second meeting on October 9.

On the morning of October 8 some of the operators in the New York or MK office had sent a telegram to the operating staff of the HB office, which telegram contained the following resolution adopted at that time by 47 members of the operating staff in New York (Respondent's Exhibit 10):

"Whereas, the MK traffic center ARTA members were denied by the ARTA the right to select their own delegates to the ARTA National Negotiation Committee in conference with the Mackay Radio management, and whereas, the MK traffic center ARTA members were denied by the ARTA the pledged right to a written ballot

[13] Dewey in effect so pointed out in a memorandum to Rodman dated October 16.

on the strike question, and whereas, a strike was called without warning and without written ballot at a most inopportune time (3 A. M. Saturday October 5th) be it resolved that:

"The former ARTA members (both full-paid and deposit) of the MK traffic center, both as individuals and as a group, herewith renounce any and all affiliation with the ARTA, and in so doing pass censure on the ARTA officials for ill-advised and unwarranted strike action, and automatically disavow any ARTA members, official, delegate or committee seeking to act as spokesman in behalf of any MK traffic center employee, or group of employees.

"And, be it further resolved that a committee composed of H. B. Funke, J. S. French and C. F. McDonough is hereby named as a Relations Committee to act as spokesman for the MK traffic center employees in any conference with the Mackay Radio Management . . ."

This telegram was posted on the bulletin board of the respondent. The three individuals named in the telegram had apparently functioned as a Relations Committee [14] in New York prior to the strike and had opposed the organization and continuation of the ARTA Local in New York. McDonough was one of the operators who was transferred from New York to San Francisco during the strike.

On October 9 in the afternoon McDonough spoke to Hatch in regard to the situation in New York during the strike and Hatch said that if McDonough wanted to tell the operators about the same matter, he would assist him by preparing notices of the meeting and securing a room. Hatch then questioned some of the men about such a meeting and decided it was advisable to hold it. He accordingly prepared notices to the effect that an informal meeting would be held in one of the respondent's rooms at 4 P. M. that day at which the men from New York would relate what happened there during the strike. The notices further stated that the question of the appointment of a "Relations Committee" may be discussed at the meeting. Hatch had secured permission to use the room and to hold the meeting. Jorgensen permitted those operators who were on duty at 4 P. M. and who desired to attend the meeting to leave their posts without loss of pay. McDonough had informed Rodman of the meeting earlier that afternoon.

About thirty to forty operators attended. McLaughlin again presided at the meeting and said that McDonough would relate to them the situation in New York. McDonough spoke about the failure of the strike in that office and the successful functioning of the
54 Relations Committee. Some of the operators asked McLaughlin how long the "scabs" from the East would remain and Patterson also desired to know why he had been placed in the list of eleven. McLaughlin said he would call Jorgensen to answer the questions. Jorgensen came to the meeting, evaded a direct answer to Patterson's question and stated that all but a few of the men

[14] Not to be confused with the "Relations Committee" of the ARTA Local.

from New York would return. McLaughlin announced his resignation from the ARTA and discussed the advisability of forming a Relations Committee. He finally stated that such a matter should be postponed for the time being.

Shortly after the meeting McLaughlin spoke to McDonough about the advisability of circulating a petition similar to that signed in New York. With McDonough's ready encouragement and aid a petition was prepared which McLaughlin signed. He then secured the signatures of the supervisors and had the petition circulated in the HB office. It was circulated to all of the operators over a period covering a number of days and finally signed by more than a majority of the operators. It was then presented to Jorgensen who in turn had it transmitted to Rodman. Rodman acknowledged its receipt in a bulletin to the operators and informed them that a copy had been sent to Stone. The petition read as follows (Board Exhibit 13):

"We the employees of the San Francisco office of the Mackay Radio Telegraph Company of California, as individuals and as a group, herewith renounce any and all affiliation with the ARTA insofar as they are empowered to act for us and negotiate any contracts in our behalf, as employees of the Mackay Radio Telegraph Company of California, disavow any member, official, delegate or committee seeking to act as spokesman for any employee or group of employees in the point to point service of this company.

"We do maintain the right to elect a member of this office or a group of employees of this office to represent us with any grievances which we may have with the management, and ask the right to present our grievances to the management as we feel they should be presented, not as members of the ARTA, but as a representative group of employees of the Mackay Radio Teleghaph Company."

A Relations Committee was never formed in the San Francisco office.

The respondent contends that the activities described above and the meeting at the hotel, even if considered reprehensible under the Act if participated in by the respondent, are here not traceable to it. These activities, it contends, were engaged in by a group of respondent's employees who desired to end the strike to save their jobs and who, being hostile to the ARTA, desired to supplant it by another form of organization. But their attempts in that direction were not actively encouraged or aided by the respondent.

We approach a consideration of this contention with the belief that the full explanation of the conduct of certain of respondent's employees is not contained in this record. At each step the respondent has offered an explanation that is to some extent plausible and which in turn plausibly links that step with the next development. But throughout there is a persistent undercurrent of another explanation that weaves the events together into a convincing whole that is far more consistent with the air of concealment and half-truth pervading the testimony concerning those employees.

Two of the employees in question are Hatch and McDonough and it is principally their activities to which we have reference. Hatch was the chief electrician and in that capacity supervised two employees. His part in the sudden collapse of the strike has already been related. His explanation of his actions and motives at that period is not convincing and much of his testimony is not credible. During the strike we find Hatch engaged in curious conduct. He suggested to Rone that they destroy the transmitters and offered to show him how such sabotage could be carried out. Hatch admitted that he had made the suggestion possibly one or twice as a "joke"—perhaps, however, with a "straight face." Again, he apparently suggested to Phelps that they go down to the airport to intercept the men from the East. After the strike we find Hatch assisting
55 McDonough in getting the men together and this contact is also curious in view of McDonough's activities. McDonough had been a member of the Relations Committee in New York. He was the "straw boss" of the operators transferred to San Francisco. On his arrival in San Francisco he immediately succeeded in calling the men together and explaining that Committee to them. He was able with McLaughlin's ready cooperation to have circulated a petition denouncing the ARTA. McDonough, although an operator in New York, was practically from the start assigned to "commercial" work involving the solicitation of customers in the business area. Although Dewey was in charge of the commercial department, McDonough reported not to him but directly to Rodman. This work was not as confining as regards both place and time and McDonough was able to converse rather freely with the HB operators and also to visit the respondent's station at Lobitos. After McDonough's visit to that place, the person in charge of the station suggested to the operators subject to his supervision that it might be a good idea to sign a petition announcing their withdrawal from the ARTA. Rodman testified that McDonough visited the Lobitos station for "educational purposes" and as part of the general plan of acquainting the Mackay employees with all parts of the system. McDonough returned to New York about the first of November.

Phelps' testimony regarding some of his conversations with Rodman is very suggestive. Rodman stated at one point: "We were all set for the strike. We had men in the bushes out here with rifles. We expected them to try to interrupt the C. P. cable. It sure would have been hot stuff for anybody monkeying with the cable or for anybody who tried to monkey with the transmitters or cable lines. They would have been surprised from the hillsides." One is reminded immediately of the coincidence of Hatch's suggestiton to Rone. A little later in the conversation, Rodman said: "Didn't you know that a bunch of thugs were sent down to the airport to intercept a planeload of men coming in there? Well, we were ready for them. We diverted the plane ten minutes before it was supposed to land." Again Hatch's mind seems to have run in the same channel. Rodman also addressed himself to another subject: "We have had private in-

vestigators working for months and we have the whole thing right here. We know the whole story and we are not going to be dominated by a gang like that." This part of the conversation is strikingly similar to Rodman's conversation with Palmer and Loudermilk, as testified to by the two operators, in which Rodman accused the union organization of being dominated by Reds and Communists and said: "Why we have men who reported your meetings to us repeatedly for the past several months. We have had an agency, a detective agency, turning in reports on your leaders and their activities. Why I have a letter here in my possession—here is a letter which is proof that you men are communists." Rodman read part of the "letter"—it was really a report—to them and the document was later introduced in evidence. It contained a series of statements describing some of the ARTA leaders as communists.

Rodman denied that he had employed "armed guards in the bushes." But he admitted that during the strike the respondent had employed guards at all points on the Pacific Coast where it operated, all of these guards being Pinkerton men. According to Rodman, about 18 Pinkerton men were employed by the respondent. As to the "report" mentioned above, Rodman said that it was attached to a memorandum from the respondent's office at Portland and then there followed this interesting bit of testimony:

"Q. And who prepared this report?

A. An outsider.

Q. Meaning who?

A. I don't know.

Q. Well, as a matter of fact, it was a detective agency, wasn't it?

A. No; it was not.

Q. Then how do you know it was prepared by an outsider?

56 A. I do know that.

Q. Who was the outsider?

A. I know the outsider's name, but it would be a breach of confidence for me to mention it, I think.

Q. Can you tell us what the outsider's business was?

A. I don't know that he has any business."

Finally Phelps testified that Rodman during the conversation said:

"If it wasn't for such fellows at Hatch, McLaughlin, Burtz,[15] and a few others, you fellows might have had a chance, but you can not win when you have got fellows like that. They are all supposed to be union men, but how do you know we haven't used a little strategy in this thing and had a few union men of our own in there to keep track of what was going on?"

In answer to a series of formal questions prepared by the respondent's attorney, Rodman denied that he, or any official of the com-

[15] At a meeting of the Local held on November 8, Burtz defended himself against charges that he among others had secretly engineered the meeting at the hotel. After some heated discussion the Local unanimously resolved that his action was wrongful, but unintentional in that he did not realize the consequences and had merely been the "tool of the Company." He was accordingly absolved of the charges and permitted to remain as a member in good standing.

pany to his knowledge, had employed "any spy or person such as is generally known as a stool pigeon."

This Board is not unaware of the widespread use by employers of detective agencies and strike-breaking agencies. Nor is it unfamiliar with the activities and methods of these agencies and of employers in spying upon employees and unions and in inciting strikers to sabotage and violence in the hope that a strike may then be broken by the pressure of adverse public opinion thus aroused or the intervention of police and troops.[18] It is obvious that only in rare instances will testimony regarding such activities be clear and open. Normally the story must be pieced together from fragments of evidence and the inferences to be drawn from them. For these reasons the Board feels that this record may not contain a complete account of the activities of such persons at Hatch and McDonough and the motives prompting such activities.

However, the charge before us is a narrow one. The respondent is alleged to have initiated and formed a labor organization and to have contributed support thereto contrary to Section 8, subdivision (2), and by the same token, subdivision (1). It is no answer to this allegation to state, as the respondent apparently contends in its brief, that no labor organization was ever in fact formed, for an abortive attempt by an employer to form a labor organization is an unfair labor practice within the meaning of that Section. However, we feel that the record does not contain as complete an account as might be obtained with respect to that particular allegation in the complaint. But in view of our decision on the other allegations in the complaint we do not deem it advisable to delay the case in order to hold a further hearing for the purpose of taking more testimony on this point. We will, therefore, dismiss the complaint without prejudice insofar as it concerns this particular charge.

IV. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

Interference with the activities of employees in joining and assisting labor organizations leads and tends to lead to labor disputes that burden and obstruct commerce and the free flow thereof. The effect that a labor dispute can have on the operations of a highly developed and complex communications system is graphically shown by the actual facts in this case. The total number of paid messages handled by the San Francisco HB office on October 1, 1935, was 5499. On October 4, the day before the strike, the total was 5,848. Then came the strike. On the first day of the strike, October 5, the total had fallen to 864. By the second day the operations were practically at a standstill—only 227 paid messages were handled on October 6. On October 7 the effect of the respondent's attempts to resume operations by using transferred operators and leased wires became noticeable as the number rose to 1,152. The strike was over early on the morning of October 8—and the resump-

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[18] See *In the Matter of Fruehauf Trailer Company*, decided December 14, 1935.

tion of nearly normal operations is reflected in the messages handled—a total of 4,489. By October 11 the total had reached 5,498 apparently a normal figure. Captain Dodd testified that during the strike the volume of traffic had "decreased enormously." Moreover he thought that there was a possibility that for some time after the strike the traffic might be less than was handled prior thereto—"It seems" to me that, with certain circuits having been stopped, would be news to customers that there had been a strike and difficulties, there was very easily a possibility that some people who had used Mackay Radio before the strike would not use them after the strike, or would not use the Mackay Radio service to as large an extent."

The tendency of an employer's interference with the activities of his employees in joining or assisting labor organizations to lead to a labor dispute burdening or obstructing commerce is also illustrated by the developments in this case. After the strike and the refusal of the respondent to reinstate the four employees involved in this case, the A. R. T. A. conducted a boycott against the Mackay system and urged that messages be sent via the other competing companies. Such conduct tends to a dislocation of the customary channels of interstate and foreign communication and thus burdens and obstructs commerce and the free flow thereof.

RULINGS MADE DURING THE HEARING

The respondent filed with the Board a statement of exceptions to certain rulings made by the Trial Examiner at the hearing before him in San Francisco and requested the Board to review these rulings. We will briefly consider the more important of those exceptions.

The respondent's fourth exception is the refusal of the Trial Examiner to exclude testimony relating to the organization and development of the Local. As we pointed out in *In the Matter of Pennsylvania Greyhound Lines, Inc.*, decided December 7, 1935, at page 6, such evidence is generally vital to a proper understanding of the issues in a case under the National Labor Relations Act. The exception is thus without merit. Respondent's fifteenth, twentieth, and thirty-second exceptions deal with rulings preventing it from questioning some of the discharged operators regarding their feelings toward "scabs," while the sixteenth, eighteenth, nineteenth, and thirty-first exceptions deal with limitations placed on somewhat similar questions concerning a boycott instituted by the A. R. T. A. against the respondent and the attitude of some of the four operators toward that boycott. In the light of the record the rulings cannot be considered prejudicial to the respondent since the testimony in the record on those two points is sufficient clearly to indicate to the Board the respondent's contention in that regard and the evidence supporting that contention. The respondent attempted to introduce such testimony to support the contention that these operators should not be reinstated even if it were found they were discharged contrary

to the National Labor Relations Act. We feel that the contention is without merit for we find that there is nothing to indicate that these operators upon reinstatement would fail to perform their duties in a loyal and efficient manner and most of the operators so testified. Respondent's fourteenth and seventeenth exceptions deal with the Trial Examiner's limitations upon questions designed to explore the attitude of these operators toward the doctrines of Communism and the affiliation of the A. R. T. A. and its leaders with adherents of those doctrines. Here also we feel that the respondent has not been prejudiced by these rulings, for the record is sufficient to indicate its contention on this point. Whatever may be the views of these operators on such a subject we do not believe that they can affect their reinstatement in the light of Jorgensen's emphatic testimony
58 that the ability of an operator is the determinative question in the hiring or discharging of employees—personal feeling, religious beliefs, home life, and political beliefs are never considered. Respondent's twenty-seventh exception is without merit as the documents admitted are relevant to the issues involved, as indicated in the decision. Respondent's second, third, fifth to tenth, inclusive, twelfth, thirteenth, twenty-first, and twenty-ninth exceptions involve rulings concerning testimony which the Board has not considered in arriving at its decision and which are therefore not prejudicial to the respondent. The twenty-eighth and thirty-fourth exceptions are taken to claimed rulings that the testimony of McLaughlin, Hatch, and other witnesses is binding upon the respondent. The Board has not considered such testimony and hence the exceptions are not warranted. The remaining exceptions, which are either without merit or taken to rulings that have not prejudiced the respondent in view of our decision in the case, do not require separate discussion.

Concluding findings of fact and conclusions of law

In addition to the above findings of fact, the following concluding findings of fact are made:

1. The American Radio Telegraphists' Association, San Francisco Local No. 3, is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

2. By refusing to reinstate to employment A. B. Loudermilk, L. K. Bash and P. D. Phelps on October 8, 1935, and L. N. Rone and G. E. Palmer on October 9, 1935, thereby discharging said employees on the respective days, and by each of said discharges the respondent did discriminate in regard to tenure of employment and has thereby discouraged membership in the labor organization known as American Radio Telegraphists' Association, San Francisco Local No. 3.

3. By the acts described in paragraph 2 above, and each of them, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

4. The aforesaid acts of respondent occurred in the course and conduct of commerce among the several states and with territories and foreign countries and directly and immediately affected employees engaged in operations in the course and conduct of such commerce and who, because of their services in connection with instrumentalities of such commerce, are an integral part of the instrumentalities of such commerce.

5. The aforesaid acts of respondent have led and tend to lead to labor disputes burdening or obstructing commerce among the several states and with territories and foreign countries and the free flow of such commerce.

Upon the basis of the foregoing the Board finds and concludes as a matter of law:

(a) Respondent, by discriminating in regard to the tenure of employment of A. B. Loudermilk, L. B. Bash, P. D. Phelps, L. N. Rone and G. E. Palmer, and each of them, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

(b) Respondent, by discouraging membership in the labor organization known as American Radio Telegraphists' Association, Local No. 3, by discriminating in regard to the tenure of employment of A. B. Loudermilk, L. K. Bash, P. D. Phelps, L. N. Rone and G. E. Palmer, and each of them, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

59 *Order*

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Mackay Radio and Telegraph Company, and its officers and agents, shall:

1. Cease and desist (a) from discharging or threatening to discharge any of its employees for the reason that such employees have joined or assisted American Radio Telegraphists' Association, San Francisco Local No. 3, or otherwise engaged in union activity, and (b) from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to A. B. Loudermilk, L. K. Bash, P. D. Phelps, L. N. Rone and G. E. Palmer immediate

tively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said A. B. Loudermilk, L. K. Bash, P. D. Phelps, L. N. Rone, and G. E. Palmer for any loss of pay they have suffered by reason of their discharge by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate stated in the findings of fact as the rate each was paid at the time of his discharge, less the amount earned subsequent to discharge as shown in the findings of fact;

(c) Post immediately notices to its employees in conspicuous places in its various offices, including those located in San Francisco and elsewhere, stating (1) that the respondent will not discharge or in any manner discriminate against members of, or those desiring to become members of, the American Radio Telegraphists' Association, or persons assisting said organization or otherwise engaging in union activity, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting; And it is further ordered,

3. That the complaint be, and it hereby is, dismissed without prejudice with respect to the allegations of Paragraphs 8, 9, and 10 thereof and so much of the allegation of Paragraph 12 as depends upon the aforesaid allegations.

Signed at Washington, D. C. this 20th day of February 1936.

[SEAL]

J. WARREN MADDEN, *Chairman.*
JOHN M. CARMODY, *Member.*
EDWIN S. SMITH, *Member.*
National Labor Relations Board.

60 In United States Circuit Court of Appeals for the Ninth Circuit

March Term, 1936. No. 8137

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

MACKAY RADIO & TELEGRAPH COMPANY, RESPONDENT

Certificate of National Labor Relations Board

The National Labor Relations Board, by its Secretary duly authorized by Rule and Regulation of the National Labor Relations Board dated the 16th day of October 1935, a copy of which Rule and Regulation is attached hereto and made a part hereof, does hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Mackay Radio & Telegraph Company, a corporation, and American Radio Teleg-

raphists' Association, San Francisco Local No. 3," the same being Case No. C–16 before said Board, said transcript including the pleadings, testimony, and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of charge made by American Radio Telegraphists' Association, San Francisco Local No. 3, filed with the National Labor Relations Board on October 15, 1935.

(2) Copy of Complaint and Notice of Hearing issued by
61 the National Labor Relations Board on November 9, 1935.

(3) Copy of Order of the National Labor Relations Board, dated November 27, 1935, designating Henry Eickoff, Jr., as Trial Examiner.

(4) Copy of Order extending time of Mackay Radio & Telegraph Company to answer.

(5) Copy of Answer of Mackay Radio & Telegraph Company, filed November 21, 1935.

(6) Copy of Amended Complaint issued by the National Labor Relations Board, dated December 16, 1935.

(7) Certified stenographic report of hearing before Henry Eickoff, Jr., Trial Examiner of the National Labor Relations Board, held on December 2 to December 20, inclusive, 1935, including all exhibits introduced in evidence.

(8) Copy of order of the National Labor Relations Board, dated December 19, 1935, transferring proceeding to National Labor Relations Board.

(9) Copy of Motion of Mackay Radio & Telegraph Company to resubmit case to the Trial Examiner, for oral argument and briefs, and for review of rulings of the Trial Examiner, filed January 2, 1936.

(10) Copy of Order of National Labor Relations Board denying Motion of Mackay Radio & Telegraph Company to resubmit case to the Trial Examiner, dated January 7, 1936.

(11) Copy of Notice of Hearing for final argument before National Labor Relations Board, dated January 9, 1936.

(12) Copy of Statement of Exceptions of Mackay Radio & Telegraph Company to rulings of the Trial Examiner at the hearing, dated January 14, 1936.

(13) Copy of decision, findings of fact, and conclusions of law, and order of the National Labor Relations Board, dated February 20, 1936.

62 In testimony whereof, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the Seal of the National Labor Relations Board, in the City of Washington, District of Columbia, this 27th day of February 1936.

[SEAL] (Signed) BENEDICT WOLF, *Secretary,*
National Labor Relations Board.

63 National Labor Relations Board, Washington, D. C.

Rule and regulation authorizing the Secretary of the Board to certify copies of papers and documents

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby authorizes the Secretary to certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time. This Rule and Regulation shall be effective upon its publication in the following manner, namely by the signing of the original by the members of the Board and the filing of said original with the Secretary of the Board, at whose office the original shall be available for public inspection and where copies of it shall be available to the public.

Signed at Washington, D. C., this 16th day of October 1935.

(Signed) J. WARREN MADDEN, *Chairman.*
(Signed) EDWIN S. SMITH, *Member.*
(Signed) JNO. M. CARMODY, *Member.*

64 In United States Circuit Court of Appeals for the Ninth Circuit

No. 8137

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

MACKAY RADIO & TELEGRAPH COMPANY, RESPONDENT

Order allowing filing of petition for enforcement, etc.

The petitioner above named having presented to this Court a petition for enforcement of certain orders of petitioner National Labor Relations Board, issued on February 20, 1936, in certain proceedings therefore instituted by petitioner against respondent above named, and it appearing that petitioner is entitled to petition this Court for the enforcement of said orders, and for that purpose to file said petition with this Court, and to have a transcript of the entire proceedings had therein by and before petitioner National Labor Relations Board filed in this court,

Now, therefore, it is hereby ordered that petitioner herein be, and it is hereby allowed and given consent to file said petition with the clerk of this Court, and to have said action docketed and placed on the calendar in accordance with the rules and practice of this Court for the purpose of such petition for enforcement of said orders of petitioner as provided by law; and

65 It is further ordered that petitioner National Labor Relations Board shall be, and it is hereby directed to prepare, certify, and file immediately with the clerk of this Court a

complete transcript of said entire proceedings had by and before petitioner, and that a copy of the said petition for enforcement of such orders be served forthwith upon respondent, Mackay Radio & Telegraph Company. Petitioner shall not be required to print the record in said proceedings had before the National Labor Relations Board, and said cause may be heard upon the typewritten papers and documents constituting the record of said proceedings, three copies of which shall be furnished this Court by petitioner.

It is hereby further ordered that both petitioner and respondent shall be, and they are hereby accorded the right and privilege of filing briefs and being heard in oral argument by counsel in accordance with the rules of practice and procedure of this Court, on the dates hereinafter set out, to wit: petitioner's brief to be filed on or before March 21, 1936; respondent's brief to be filed on or before April 6, 1936; oral argument to be heard before this court at San Francisco, California, on April 9, 1936.

Dated this 2nd day of March, 1936.

(Signed) CURTIS D. WILBUR,
Senior United States Circuit Judge.

66 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Petition for the enforcement of an order of the National Labor Relations Board

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (Public, No. 198, 74th Congress, 49 Stat. 10, 29 U. S. C. A. Sec. 160 (e)) known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a proceeding instituted against respondent, Mackay Radio & Telegraph Company. Said proceeding is known upon the records of the Board as Case No. C–16, the title thereof being "In the Matter of Mackay Radio & Telegraph Company, a corporation, and American Radio Telegraphists' Association, San Francisco, Local No. 3."

In support of such petition, petitioner respectfully shows:

67 (1) Respondent, Mackay Radio & Telegraph Company, is, and at all times herein mentioned was, a corporation organized under and existing by virtue of the laws of the State of California, and having offices and places of business in the Cities of San Francisco, Los Angeles, San Diego and Oakland, California; Portland, Oregon; Seattle and Tacoma, Washington; and Honolulu, Hawaii.

(2) By reason of the matters alleged in paragraph (1) hereof, the Court has jurisdiction of this petition under Section 10 (e) of the said National Labor Relations Act.

(3) On the 9th day of November, 1935, a charge having theretofore been filed with the Board by American Radio Telegraphists' Association, San Francisco Local No. 3, the Board did issue its complaint charging that the respondent had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act. On the 11th day of November, 1935, said complaint, together with a notice of hearing thereon, was duly served upon respondent. Thereafter, on or about the 21st day of November, 1935, the respondent filed its answer to the said complaint.

(4) Thereafter, on the 2nd day of December, 1935, and on successive days up to and including the 20th day of December, 1935, a Trial Examiner, duly designated by the Board for that purpose, held a hearing on the charges stated in said complaint, pursuant to the said notice of hearing. At said hearing testimony and other evidence with respect to the charges stated in said complaint were adduced by the several parties to said proceeding, including respondent, who was present and represented by counsel and by certain of its officers, agents, and employees. Thereafter a final hearing of said proceeding was had before the Board upon the entire record in said proceeding and upon briefs and oral argument of counsel for the parties.

(5) Thereafter, on the 20th day of February, 1936, the Board having duly considered the matter and being sufficiently ad-
68 vised in the premises, and being of the opinion upon all of the testimony and evidence that respondent had been and then was engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to respondent:

"ORDER

"On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Mackay Radio and Telegraph Company, and its officers and agents, shall:

"1. Cease and desist (a) from discharging or threatening to discharge any of its employees for the reason that such employees have joined or assisted American Radio Telegraphists' Association, San Francisco Local No. 3, or otherwise engaged in union activity, and (b) from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively

rough representatives of their own choosing, and to engage in oncerted activities for the purpose of collective bargaining or other utual aid or protection, as guaranteed in Section 7 of the National abor Relations Act.

"2. Take the following affirmative action which the Board finds will ffectuate the policies of the Act:

"'(a) Offer to A. B. Loudermilk, L. K. Bash, P. D. Phelps, L. N. Rone and G. E. Palmer immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights nd privileges previously enjoyed;

"'(b) Make whole said A. B. Loudermilk, L. K. Bash, P. D. Phelps, . N. Rone and G. E. Palmer for any loss of pay they have suffered y reason of their discharge by payment, respectively, of a sum of oney equal to that which each would normally have earned as ages during the period from the date of his discharge to the date f such offer of reinstatement, computed at the wage rate stated in he findings of fact as the rate each was paid at the time of his ischarge, less the amount earned subsequent to discharge as shown i the findings of fact;

"'(c) Post immediately notices to its employees in conspicuous laces in its various offices, including those located in San Franisco and elsewhere, stating (1) that the respondent will not dischargе or in any manner discriminate against members of, or those esiring to become members of, the American Radio Telegraphists' ssociation, or persons assisting said organization or otherwise enaging in union activity, and (2) that such notices will remain osted for a period of at least thirty (30) consecutive days from the date of posting; And it is further ordered,'

"3. That the complaint be, and it hereby is, dismissed without prejudice with respect to the allegations of Paragraphs , 9, and 10 thereof and so much of the allegation of Paragraph 12 s depends upon the aforesaid allegations."

(6) The said order was duly served upon respondent and is, and t all times since its said issuance and service has been, in full force nd effect.

Wherefore the Board petitions this Honorable Court for the enorcement of its said order of February 20, 1936, and pursuant to ection 10 (e) of said National Labor Relations Act certifies and les with this petition a transcript of the entire record in the proeeding before the Board, including the pleadings, testimony and vidence, findings of fact and said order of the Board.

The Board prays this Honorable Court that it cause notice of the ling of this petition and transcript to be served upon respondent, nd that this Court take jurisdiction of the proceeding and of the uestions determined therein, and make and enter upon the pleadngs, testimony and evidence, and the proceedings set forth in such ranscript, and upon the order made thereupon, a decree enforcing

in whole said order of the Board and commanding respondent, its officers, agents and representatives, to comply therewith.

JOHN M. CARMODY,
EDWIN S. SMITH,
Members of National Labor Relations Board.

CHARLES FAHY,
General Counsel,
National Labor Relations Board, Washington, D. C.

[*Duly sworn to by John M. Carmody and Edwin S. Smith; jurat omitted in printing.*]

71 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Admission of Service

Filed March 3, 1936

Receipt of a certified copy of each of the following documents in the above-entitled cause: (1) "Petition for the Enforcement of an Order of the National Labor Relations Board," (2) "Order Allowing Filing of Petition for Enforcement," etc., this 2nd day of March 1936, is hereby acknowledged.

MACKAY RADIO & TELEGRAPH COMPANY.
By E. H. DODD, *Secretary.*

[File endorsement omitted.]

72 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Answer to petition

Filed April 13, 1936

The respondent, Mackay Radio and Telegraph Company, without waiving the objection heretofore made and reserved by it throughout the proceedings heretofore had in this cause before the National Labor Relations Board to the jurisdiction of said National Labor Relations Board to hear and to determine any matters pertaining to the respondent, and expressly reserving its right to urge this Honorable Court to dismiss the petition herein for lack of jurisdiction in said National Labor Relations Board and in this Honorable Court because of the unconstitutionality of the National Labor Relations Act under which said National Labor Relations Board has purported and is purporting to act herein, for answer to the Petition for the Enforcement of an Order of the National Labor Relations Board, admits, denies, and alleges:

I. Admits that the respondent is, and at all times mentioned in the petition was, a corporation organized and existing under and by virtue of the laws of the State of California, and having offices in the Cities of San Francisco, Los Angeles, San Diego, and
73 Oakland, California; Portland, Oregon; Seattle and Tacoma, Washington; and Honolulu, Hawaii.

II. Admits and alleges that, pursuant to charges filed with the Board by American Radio Telegraphists' Association, San Francisco Local No. 3 and on November 9, 1935, the Board issued and served its complaint against and upon respondent alleging that respondent had discharged the five persons named in Paragraph V hereof for the reason that they were members of a labor organization and had been engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, and that by so doing respondent had discriminated in regard to the hire and tenure of employment of such persons and had interfered with, restrained, and coerced its employees, all in violation of "An Act of Congress, approved July 5, 1935 (Public #198, 74th Congress, 49 Stat. 10, 29 U. S. C. A. Sec. 160 (e)—)," commonly known as the "National Labor Relations Act"; and that the petition of the Board also alleged that respondent had initiated and formed a labor organization and had dominated and interfered with the administration of such labor organization and had contributed financial and other support thereto in violation of the same Act.

III. Admits and alleges that thereafter and on November 10, 1935, respondent, for the sole purpose of protecting its rights and without in any way consenting to the jurisdiction of said Board, filed its answer with said Board denying all of the material allegations of said complaint.

IV. Admits and alleges that thereafter, on the second day of December 1935 and on successive weekdays up to and including the 20th day of December 1935, a Trial Examiner, designated by the Board for that purpose, held a hearing on the charges stated in
74 said complaint; that at said hearing, testimony and documentary evidence with respect to the charges stated in said complaint were adduced by the parties to said proceeding; and that after both parties to the proceeding had rested and after the attorney for the Board had completed his oral argument, but before counsel for respondent had completed his oral argument, the Board transferred the proceeding to itself and directed the Trial Examiner immediately to transmit the transcript to the Board at Washington, D. C., without permitting said Trial Examiner to prepare and file his report or to make any findings or recommendations.

V. Admits and alleges that thereafter and on or about December 30, 1935, respondent, through its attorney, duly filed with the Board its motions (a) to resubmit said proceeding to the Trial Examiner with directions that he prepare and file an intermediate report, (b) that the Board review the rulings made by the Trial Examiner during the course of the hearing in said proceeding, and (c) that

respondent be accorded the opportunity for oral argument; that the Board denied the first of these three motions but granted the other two; that thereafter and on or about January 14, 1936, pursuant to leave accorded to it by the Board, respondent filed with the Board its Statement of Exceptions to the rulings by the Trial Examiner; and that oral argument was had before the Board at its offices in Washington, D. C., on or about January 20, 1936.

VI. Admits and alleges that thereafter and on or about February 20, 1936, the Board stated its findings of fact and issued and entered an order directing respondent to offer reinstatement with back pay to the said five former employees found by the Board to have been discharged in violation of said National Labor Relations Act
75 and to take certain other affirmative action designed to effectuate the policy of said Act; and that said order dismissed without prejudice the allegations in the complaint charging that respondent had initiated and formed a labor organization and had dominated and interfered with the administration of such labor organization and had contributed financial and other support thereto in violation of the same Act.

VII. Admits that said order was in the form set forth in Paragraph V of the petition herein and that a copy of said order was served upon the respondent.

VIII: Denies that this Honorable Court has jurisdiction of the petition herein filed by said National Labor Relations Board under Section 10 (e) of said National Labor Relations Act, for the reason that the said National Labor Relations Act, pursuant to which the Board purported to act in making the said order, was and is in violation of the Constitution of the United States and null and void for each of the following reasons:

(a) It deprives respondent of its liberty and property without due process of law, in contravention of the Fifth Amendment thereof;

(b) It is an unlawful and unwarranted attempt to exercise a power not thereby conferred upon Congress;

(c) It is a mere colorable attempt by Congress to exercise the power to regulate commerce with foreign nations and among the several states conferred upon the Congress in Article I, Section 8 thereof and not intended or designed to be an exercise of such power;

(d) It is a direct encroachment upon the powers reserved to the states respectively, or to the people, by the Tenth Amendment thereto.

(e) If construed to permit an award of money to former
76 employees, it would be a violation of the Seventh Amendment, which guarantees the right of trial by jury.

(f) It violates Article III of the Constitution in that it purports and attempts to confer judicial power upon the National Labor Relations Board, an agency of the executive department of government.

IX. Except as hereinabove expressly admitted, denies each and every remaining allegation contained in the petition herein.

X. Opposes the granting by this court of any of the relief prayed for by said National Labor Relations Board in its petition herein, for the following reasons:

1. The National Labor Relations Act as construed by the Board and applied to respondent in said order of the Board was and is in violation of the Constitution of the United States and null and void for each of the reasons severally set forth in Paragraph VIII hereof.

2. The said order of the Board deprives respondent of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

3. The action of the Board in transferring the case to itself after the taking of testimony had been concluded without requiring or permitting the Trial Examiner to prepare and submit his report and in deciding the case thereafter without having received and examined such a report deprived respondent of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

4. The said order of the Board constitutes an abuse of the
77 discretion and authority vested in and upon said Board by said Act and is arbitrary and capricious.

5. The order of the Board herein, dated February 20, 1936, is void, in that the said order is not supported by the evidence adduced before the Trial Examiner and in that it is contrary to law.

6. The Board erred in sustaining the ruling of the Trial Examiner denying the motion to dismiss the complaint made by the attorney for respondent after the attorney for the Board had completed his case and had rested.

7. The Board erred in sustaining the ruling of the Trial Examiner denying the motion to dismiss the complaint made by the attorney for respondent after the taking of testimony had been concluded and both sides had rested.

8. The Board erred in denying the motion made by the attorney for respondent to resubmit the case to the Trial Examiner for the purpose of having said Trial Examiner prepare and file his report.

9. The Trial Examiner erred in making each of his several rulings, to which exception was duly taken at the hearing before the Examiner, as set forth in respondent's Statement of Exceptions filed with the Board as hereinabove set forth, each such ruling being contrary to law.

10. The Board erred in overruling the exceptions taken by respondent to the several rulings made by the Trial Examiner which are set forth in the Statement of Exceptions filed with the Board as hereinabove set forth.

11. The Board erred in sustaining the rulings of the Trial Examiner:

(a) In admitting into evidence over objection by the attorney for respondent the following testimony:

78 (1) By the witness Rone as to his reasons for joining a certain labor organization known as American Radio Telegraphists' Association;

(2) By the witness Rone as to the history of the organization and the development of the San Francisco Local No. 3 of said labor organization;

(3) By the witness Loudermilk as to conversations between the witness and one Richards, to the effect that respondent had tried to discourage its employees from joining said labor organization;

(4) By the witness Loudermilk as to alleged violations by respondent of the NRA Code applicable to the telegraph industry;

(5) By the witness Loudermilk as to the activities of an organization known as Commercial Employees Association and of one McDonough in the City of New York;

(6) By various witnesses as to the contents of a written document available for introduction into evidence;

(b) In denying to the attorney for respondent the opportunity to cross-examine:

(1) The witnesses Loudermilk, Palmer, Rone, Bash, and Phelps as to whether said labor organization or any of its officers or any of said witnesses were affiliated with or members of any communistic organizations; as to whether said witnesses or any of the officers of said labor organization were in sympathy with the principles and purposes of communism; as to their attitude toward "scabs" and toward the boycott against respondent; as to the extent of their loyalty to respondent as their employer;

79 (2) The witness Phelps as to whether he had received gratuities from members of the Stock Exchange and divided them with his immediate superior, Mr. Dewey, and as to the reasons why the floor manager of the Stock Exchange requested respondent to discharge him;

(3) The witness Rone as to his activities from August 1, 1929, to December 31, 1929, during which period he was confined in a Federal penitentiary;

(4) The witness Jorgensen as to whether he would have attended a meeting of employees of respondent similar to that held at the Bellevue Hotel on the morning of October 8, 1935, if such meeting had been held under the auspices of said labor organization and in its regular meeting place.

12. The Board erred in sustaining the rulings of the Trial Examiner admitting into evidence over the objection of the attorney for respondent the Board's Exhibits numbered 9, 10, and 18 to 21, inclusive, for the reason that the evidence contained in said documents was wholly irrelevant, incompetent, and immaterial.

13. The Board erred in each of its findings of fact and conclusions of law in that they are not supported by the evidence herein and in that they are contrary to law.

14. The Board erred in finding and concluding that respondent severally (a) had engaged in and (b) was engaging in unfair labor practices affecting commerce within the meaning of Section 8 Subdivision 1 and Section 2 Subdivisions 6 and 7 of the National Labor Relations Act, each such finding and conclusion being contrary to the evidence and unwarranted in law.

15. The Board erred in finding and concluding severally (a) that the acts of respondent set forth in the decision occurred in the
80 course and conduct of commerce among the several states and with territories and foreign countries, (b) that such acts directly and immediately affected employees engaged in operations in the course and conduct of such commerce, and (c) that because of their services in connection with instrumentalities of such commerce, such employees were integral parts of the instrumentalities of such commerce, each such finding and conclusion being contrary to the evidence and unwarranted in law.

16. The Board erred in finding and concluding that respondent interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of said National Labor Relations Act, such finding and conclusion being contrary to the evidence and unwarranted in law.

17. The Board erred in finding and concluding that any acts of respondent led or tend to lead to labor disputes, burdening or obstructing commerce among the several states and with territories and foreign countries and the free flow of such commerce, such finding and conclusion being contrary to the evidence and unwarranted in law.

18. The Board erred in finding and concluding that respondent had discouraged membership in the labor organization known as "American Radio Telegraphists' Association, San Francisco Local No. 3", such finding and conclusion being contrary to the evidence and unwarranted in law.

19. The Board erred in finding and concluding that by refusing to reinstate to employment said A. B. Loudermilk, L. K. Bash, P. D. Phelps, L. N. Rone, and G. E. Palmer, respondent thereby discharged said persons, such finding and conclusion being contrary to the evidence and unwarranted in law.

20. The Board erred in finding and concluding that by refusing to reinstate to employment said A. B. Loudermilk, L. K.
81 Bash, P. D. Phelps, L. N. Rone, and G. E. Palmer, respondent discriminated in regard to tenure of employment and thereby discouraged membership in the labor organization known as "American Radio Telegraphists' Association, San Francisco Local No. 3", such finding and conclusion being contrary to the evidence and unwarranted in law.

21. The Board erred in finding and concluding that respondent "by discriminating in regard to the tenure of employment of A. B. Loudermilk, L. K. Bash, P. D. Phelps, L. N. Rone, and G. E. Palmer, and each of them, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act," such finding and conclusion being contrary to the evidence and unwarranted in law.

22. The Board erred in finding and concluding that respondent "by discouraging membership in the labor organization known as

American Radio Telegraphists' Association, Local No. 3, by discriminating in regard to the tenure of employment of A. B. Loudermilk, L. K. Bash, P. D. Phelps, L. N. Rone, and G. E. Palmer, and each of them, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act," such finding and conclusion being contrary to the evidence and unwarranted in law.

23. The Board erred in finding and concluding that respondent "by refusing to reinstate to employment A. B. Loudermilk, L. K. Bash, and P. D. Phelps on October 8, 1935, and L. N. Rone and G. E. Palmer on October 9, 1935, thereby discharging said employees on the respective days, and by each of said discharges,

* * did discriminate in regard to tenure of employment

82 and has thereby discouraged membership in the labor organization known as American Radio Telegraphists' Association, San Francisco Local No. 3," such finding and conclusion being contrary to the evidence and unwarranted in law.

Wherefore, respondent prays that the petition be dismissed.

MACKAY RADIO & TELEGRAPH COMPANY.
By E. H. DODD, *Secretary.*

J. HAROLD MERRICK,
LOUIS W. MYERS
HOMER I. MITCHELL
Counsel for respondents.

83 [*Duly sworn to by E. H. Dodd; jurat omitted in printing.*]

84 *Affidavit of service by mail*

[Title omitted.]

Chester Loomis, Jr., being first duly sworn, deposes and says: That this affiant is a citizen of the United States of America, resident of the County of Los Angeles, over the age of eighteen years, not a party to the within and above entitled action: that this affiant is making this service for J. Harold Merrick, Louis W. Myers, Homer I. Mitchell, who are the attorneys for the respondent in this action; that this affiant is of the firm of Parker, Stone & Baird Co. 241 East Fourth Street, who are the printers and agents in this matter for said attorneys, and have their offices in the City of Los Angeles, State of California.

That on the 11th day of April, 1936, affiant served the within answer on the petitioner in this action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said petitioner at the business address of said attorneys as follows: Charles Fahy, St. Francisco Hotel, San Francisco, California, Bertram Edeses, Regional Attorney, National Labor Relations Board, 1095 Market S. San Francisco, California, then sealing said envelopes,

and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California.

That there is delivery service by United States mail at
85 the places so addressed or there is a regular communication by mail between the place of mailing and the places so addressed.

CHESTER LOOMIS, JR.

Subscribed and sworn to before me this 11th day of April, 1936.

H. C. LILLIE, *Clerk, District Court of Appeals,*
Second Appellant District,
State of California.

By C. L. KING, *Deputy.*

[File endorsement omitted.]

86 In United States Circuit Court of Appeals for the Ninth Circuit

Before WILBUR, GARRECHT and MATHEWS, Circuit Judges

[Title omitted.]

Order of submission

April 16, 1936

Ordered above cause argued by Mr. Charles Fahy, General Counsel, National Labor Relations Board, and by Mr. Bertram Edises, Attorney, National Labor Relations Board, counsel for petitioner, and by Mr. Louis W. Myers, counsel for respondent—Messrs. J. Harold Merrick, Homer I. Mitchell and David Livingston, associate counsel for respondent, being present—and submitted to the court for consideration and decision, with leave to counsel to file further briefs 30 x 30.

87 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Order directing filing of opinions and filing and recording of judgment

January 11, 1937

By direction of the court, ordered that the opinion, concurring opinion and dissenting opinion, this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion and concurring opinion rendered.

88 In United States Circuit Court of Appeals for the Ninth Circuit

No. 8137

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

MACKAY RADIO & TELEGRAPH COMPANY, RESPONDENT

On Application for Enforcement of an Order of the National Labor Relations Board

Before WILBUR, GARRECHT, and MATHEWS, Circuit Judges

Opinions

Filed Jan. 11, 1937

WILBUR, Circuit Judge: The National Labor Relations Board has petitioned this court for an order of enforcement in accordance with the provisions of Sec. 10, sub. (e), of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. A. § 150, et seq.) approved July 5, 1935. The order of the Board was made after an extensive hearing, and at the conclusion of a lengthy opinion rendered upon the complaint of the American Radio Telegraphists' Association, San Francisco Local No. 3, on behalf of five employees of the respondent who were not reemployed by the respondent after the termination of a strike in which four of the five employees actively participated as members of that Association. The order requires the respondent to cease and desist from discharging or threatening to discharge employees who have joined that union or have engaged in union activities, and from interfering with the rights of self organization and collective bargaining "as guaranteed by Sec. 7 of the National Labor Relations Act," and to offer the five former employees "immediate and full reinstatement * * * without prejudice to any rights previously enjoyed," and to pay them full compensation for the period of
89 unemployment, less the amount earned subsequent to discharge, and to post notices for thirty days that it will not discharge members of that Association or others desiring to join or assist it or other union activities. The full text of the order is set out in Footnote No. 1.[17]

[17] "On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Mackay Radio and Telegraph Company, and its officers and agents, shall:

"1. Cease and desist (a) from discharging or threatening to discharge any of its employees for the reason that such employees have joined or assisted American Radio Telegraphists' Association, San Francisco Local No. 3, or otherwise engaged in union activity, and (b) from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and

90 The respondent appears and attacks the constitutionality of the National Labor Relations Act (49 Stat. 449; 29 U. S. C. A. §150, approved July 5, 1935), hereinafter referred to as "the Act", and the validity of the proposed order in pursuance thereof.

At the time of the argument the Supreme Court had under advisement a case arising under the Bituminous Coal Conservation Act (15 U. S. C. A. §§801–827; 49 Stat. c. 824, p. 991), otherwise known as the Guffey Act, a decision in which it was thought might be decisive in this matter. Accordingly it was arranged that supplemental briefs might be filed by the parties within sixty days after the decision in that case. The decision therein was rendered May 18, 1936 (Carter v. Carter Coal Co., 56 S. C. 855). The act there in question dealt with the mining of bituminous coal. It was held that such production of coal was not interstate commerce, and, consequently, it was held that the attempt of Congress to regulate that industry was not within the power delegated to the federal government by the commerce clause of the Constitution. Upon the authority of that decision the Circuit Court of Appeals for the Fifth Circuit held the National Labor Relations Act void insofar as it attempts to regulate the production of steel (Nat'l Labor Relations Board v. Jones & Laughlin Steel Corporation, decided June 15, 1936).

In the case at bar it is conceded that the respondent was engaged in interstate commerce, and that each of the five employees ordered restored to their positions was so engaged.

The respondent contends that the entire Act must be held invalid if the general provisions thereof relating to such interstate activities as mining and manufacturing are beyond the regulatory power of Congress, because if the all inclusive character of the Act is destroyed the purpose of Congress is frustrated. It is pointed out that the Supreme Court in January 1908, in the cases of Howard v.
91 Illinois Central Railroad Co., and Brooks v. So. Pacific Co., 207 U. S. 141, declined the task of segregating the interstate

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to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

"2. To take the following affirmative action which the Board finds will effectuate the policies of the Act:

"(a) Offer to A. B. Loudermilk, L. K. Bash, P. D. Phelps, L. N. Rone, and G. E. Palmer immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

"(b) Make whole said A. B. Loudermilk, L. K. Bash, P. D. Phelps, L. N. Rone, and G. E. Palmer for any loss of pay they have suffered by reason of their discharge by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate stated in the findings of fact as the rate each was paid at the time of his discharge, less the amount earned subsequent to discharge as shown in the findings of fact;

"(c) Post immediately notices to its employees in conspicuous places in its various offices, including those located in San Francisco and elsewhere, stating (1) that the respondent will not discharge or in any manner discriminate against members of, or those desiring to become members of, the American Radio Telegraphists' Association, or persons assisting said organization or otherwise engaging in union activity, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting; and it is further ordered,

"(3) That the complaint be, and it hereby is, dismissed without prejudice with respect to the allegations of Paragraphs 8, 9, and 10 thereof and so much of the allegation of Paragraph 12 as depends upon the aforesaid allegations.

"Signed at Washington, D. C., this 20th day of February, 1936.

J. WARREN MADDEN, *Chairman.*
JOHN M. CARMODY, *Member.*
EDWIN S. SMITH, *Member.*
National Labor Relations Board."

[SEAL]

commerce features from the intrastate features of an Act of Congress of June 11, 1906, dealing with employers' liability (34 Stat. 232), for the purpose of limiting the Act to interstate commerce. The Act, however, presented a peculiar difficulty in that it purported to deal specifically with the District of Columbia and with the territories of the United States over which the Congress of the United States has plenary legislative authority. To write into that Act a restriction confining it to those employees engaged in interstate commerce the court thought would be to negative the expressed will of Congress as to the District of Columbia and the territories. Justice White, speaking for the majority of the court, said: "To write into the Act the qualifying words, therefore, would be adding to its provisions in order to save it in one aspect [as to interstate commerce] and thereby to destroy it in another [as to the District of Columbia and as to the territories]; that is, to destroy in order to save, and to save in order to destroy." The decision of the majority of the Supreme Court is, of course, controlling, but it should be noted that the minority of four members maintained that the constitutional and unconstitutional features of the Act could be separated and the former enforced by holding the Act in question applicable only to interstate commerce and to those engaged in it. The difficulty which confronted the Supreme Court in the Howard case, 207 U. S. 141, supra, is not so pronounced in dealing with the National Labor Relations Act as it was in the case dealing with the Employers' Liability Act of June 11, 1906, because in the Labor Relations Act Congress has expressly predicated that legislation upon its power to regulate interstate commerce. It has defined commerce in Sec. 2, sub. 6, as interstate commerce.[18] The
92 term "affecting commerce" is also described as applying to acts which "burden" or "obstruct" the free flow of "commerce." §2, sub. 7.[19]

In view of the definition of commerce contained in the Act, and the use of the familiar expressions relating thereto: "Burdening", "obstructing," the "free flow of commerce," the Act by its terms is expressly confined to the regulation of interstate commerce. Any attempt to apply the Act to activities other than interstate commerce and to matters which only indirectly affect such commerce, is not authorized by the terms of the Act if properly construed. There is, therefore, no difficulty to be encountered by the courts in limiting the Act to matters within the commerce clause of the Constitution, for Congress has already done so. If the officials of the government in executing this statute have attempted to extend it to matters wholly intrastate in character they

[18] "The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several states, or between the District of Columbia or any Territory of the United States and any state or other territory, or between any foreign country and any state, territory, or the District of Columbia, or within the District of Columbia or any territory, or between points in the same state but through any other state or any territory or the District of Columbia or any foreign country."

[19] "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

have done so in the teeth of the statute and the federal Constitution. Moreover, Congress has expressly provided that the invalidity of a portion of the Act shall not affect its application of the Act to others coming within the constitutional power of Congress (Act Sec. 15),[20] and this provision of the Act requires the court to apply the Act to interstate commerce unless it can be clearly seen that such application would frustrate the real object and intent of Congress in passing the Act.

In a recent decision by the Circuit Court of Appeals for the Fifth Circuit it was held that the Act was not totally void, although some of the provisions might be held unconstitutional (Bradley Lbr. Co. of Arkansas v. Nat'l Labor Relations Board, decided June 5, 1936). See also, Dorchy v. Kansas, 264 U. S. 286, 290; Utah Power & Light Co. v. Pfost, 286 U. S. 165; Railroad Retirement Board v. Alton R. Co., 295 U. S. 330; Carter v. Carter Coal Co., 56 S. Ct. 855, 873; dissent of Chief Justice Hughes, id. p. 877; dissent of Justice Cardozo, id. p. 883.

93 Insofar as the Act purports to regulate interstate commerce Congress was acting within its constitutional grant of power over commerce, and the Act is thus applicable to the interstate business of the respondent in which the five employees were engaged.

It remains to consider the constitutional limitations upon the power of Congress to regulate commerce contained in the bill of rights (Const. Amd'ts 1 to 10), by which the people of the United States sought to protect individual and personal rights from legislative encroachment, by prohibiting Congress and the national government from enacting or enforcing laws derogatory thereto. The respondent invokes Articles V and VII of these constitutional amendments and claims that it would be deprived of liberty and property within the meaning of Article V and of a jury trial as to damages in violation of Article VII if the order of the Board were enforced.

These fundamental rights of man were recognized by the Declaration of Independence as inherent in him. It was therein declared that governments were instituted to secure these rights.[21]

The Fifth Amendment to the Constitution provides for the protection of certain of these inalienable rights by providing that "no person shall be deprived of life, liberty, or property without due process of law" by the federal government. The respondent contends that one of the liberties announced by the Declaration of Independence as a self-evident right, and thus guaranteed by the federal Constitution, is the right of men to freely enter into contracts. Respond-

[20] "Sec. 15. If any provision of thsi Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

[21] "We hold these truths to be sedf-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. * * *".

ent contends that this right to freely contract with is employees is taken away without due process of law by the order which requires it to offer to enter into a contract of employment with persons and upon terms fixed by the National Labor Relations Board and
94 not of its own choosing, and also contends that the contemplated order in effect requires it to discharge five employees with whom it has entered into a binding contract to retain in its employment and which it desires to retain and to substitute five persons it does not desire to employ. It also contends that by the order requiring it to pay wages to these persons for the period during which they have been out of employment is in effect to assess damages against it without a jury trial in violation of the Seventh Amendment to the Constitution.

From the earliest times it has been held that the word "liberty" as used in the Fifth Amendment to the Constitution and in the Declaration of Independence included the right to freely contract, and that to deprive an individual of that right without due process of law was to deprive him of liberty in violation of the Constitution. This matter was considered by the Supreme Court in 1907 in Adair v. United States, 208 U. S. 161, decided January 1908, where it had under consideration the constitutionality of an act of Congress passed June 1, 1898 (30 Stat. 424, ch. 370). This act provided a plan for the arbitration of labor disputes occurring in the business of interstate commerce and transportation. A prior act on the same subject, passed October 1, 1888 (25 Stat. 501), was repealed by the later act. The 10th section of the Act of June 1, 1898, prohibited employers from requiring as a condition of such employment that the employee enter into an agreement, either written or verbal, not to become or remain a member of a labor corporation, association, or organization, and prohibited the employer from threatening any employee with loss of employment or to discriminate against an employee because of his membership in such a labor organization. A violation of this portion of the Act was made a crime against the United States, and Adair, the appellant, who was an agent and employee of a common carrier, was convicted of a violation of this portion of the Act by discharging an employee because of his membership in a labor organization. The Supreme Court held that the Act of Congress making such discharge a crime was unconstitutional because it violated the fundamental right of the employer to terminate its contract with its employees. The question propounded and answered by the court in that case was as follows:

95 "May Congress make it a criminal offense against the United States—as, by the 10th section of the act of 1898, it does—for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization?"

The court answered this question in the negative because it held that such an act infringed the liberty of the common carrier and its agents

to enter into and terminate its contracts. The petitioner seems to concede that this decision and a subsequent decision of the Supreme Court on the same subject (Coppage v. Kansas, 236 U. S. 1; 35 S. C. 240, decided January 25, 1915) control unless they are overruled or modified by the later decision of the Supreme Court rendered May 26, 1930, in Texas & New Orleans Ry. Co. v. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 643. I quote from the petitioner's brief in that regard in Foot-note No. 6.[22]

96 In view of the position of the petitioner with reference to these two decisions of the Supreme Court and the respondent's reliance thereon, it is important to consider the basis of these decisions. Justice Harlan, speaking for the court in Adair v. U. S., supra, said:

"The first inquiry is whether the part of the 10th section of the act of 1898 upon which the first count of the indictment was based is repugnant to the 5th Amendment of the Constitution, declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment. Such liberty and right embrace the right to make contracts for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject-matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interests, or as hurtful to the public order, or as detrimental to the common good."

The court, speaking through Justice Harlan, quoted with approval from Cooley on Torts, p. 278, as follows:

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[22] "Respondent in this case—as did respondent in the Texas & New Orleans case—will undoubtedly attempt to rely upon the Adair and Coppage cases. In these cases the court held invalid on grounds of due process, legislation making it a criminal offense, respectively, to discharge employees because of membership in a labor organization and to require as a condition of employment that employees refrain from such membership.

"These cases were decided in 1908 and 1915 by sharply divided courts. Both decisions were vigorously urged before the Supreme Court in the Texas & New Orleans case. The unanimous court in the Texas & New Orleans case expressly holds them inapplicable to the situation before the court there, and here.

"It is unnecessary to make an extended analysis of the Adair and Coppage cases or to consider whether or not they were in effect overruled by the Texas & New Orleans case. If they were inapplicable in the Texas & New Orleans case they are inapplicable here, for the facts of the two cases are at all points parallel.

"In the Texas and New Orleans case the District Court, using practically the language of the statute in its decree, enjoined the Railroad from violating the statute. In punishing the Railroad for contempt arising out of its violation of the injunction the court gave specific content to the general language of the statute. It held that discharging some of the employees, and discriminating against others, because of their union activities, and the fostering of the Employees Association, were violations of the injunction. This meant that these acts of the Railroad were violations of the statute, since the injunction was based upon the statute and followed its language.

"The Texas & New Orleans case held that the discharge of employees for union activity was not the 'normal exercise of the right' to hire and fire employees which is protected under the due process clause. It should be noted further, however, that the reasoning of Chief Justice Hughes followed closely that of the dissenting opinions in the Adair and Coppage cases.

"This is perfectly clear from the fact that the amended bill of complaint, upon the basis of which the District Court entered the permanent injunction, incorporated most of the matter alleged and proved in the contempt proceedings. The facts thus alleged were squarely before the Supreme Court for decision, and it so regarded them."

"Mr. Cooley, in his treatise on Torts, p. 278 well says: 'It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the
97 refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress.'"

Justice Harlan also quoted with approval from the decision of the court in Lochner v. New York, 198 U. S. 45, as follows:

"'The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution. Allgeyer v. Louisiana, 165 U. S. 578. Under that provision no State can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this Amendment, unless there are circumstances which exclude the right."

After quoting from Lochner v. N. Y., supra, he proceeded as follows:

"Although there was a difference of opinion in that case among the members of the court as to certain propositions, there was no disagreement as to the general proposition that there is a liberty of contract which cannot be unreasonably interfered with by legislation. * * *

"While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least, in the absence of contract between the parties—*to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another.* The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it.
98 *So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee.* It was the legal right of the defendant, Adair,—however unwise such a course might have been,—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so,—however unwise such a course on his part might have been,—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. *In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.* * * *

"As the relations and the conduct of the parties towards each other was not controlled by any contract other than a general employment on one side to accept the services of the employee and a general agreement on the other side to render services to the employer,—no term being fixed for the continuance of the employment,—*Congress could not, consistently with the 5th Amendment, make it a crime against the United States to discharge the employee because of his being a member of a labor organization.*" [Italics ours.]

The court then proceeded to consider the argument that notwithstanding the Fifth Amendment and its apparent violation, Congress, in pursuance of its authority to regulate interstate commerce, had a right to thus limit the liberty of contract. In answer to this proposition advanced by the government the Supreme Court held that such legislation was not a regulation of interstate commerce. In view of the importance of the question in the case at bar, I further quote from that decision as follows:

"Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization *as to authorize Congress to make it a crime against the United States for an agent of an*
99 *interstate carrier to discharge an employee because of such membership on his part.* If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ, in the conduct of its interstate business, only members of labor organizations, or only those who are not members of such organizations,—*a power which could not be recognized as existing under the Constitution of the United States.* No such rule of criminal liability as that to which we have referred can be regarded as, in any just sense, a regulation of interstate commerce. *We need scarcely repeat what this court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, cannot be exerted in violation of any fundamental right* secured by other provisions of the Constitution. Gibbons v. Ogden, 9 Wheat. 1, 196, 6 L. Ed. 23, 70; Lottery Cose (Champion v. Ames) 188 U. S. 321, 353, 47 L. Ed. 492, 23 Sup. Ct. Rep. 321.

"It results, on the whole case, that the provision of the statute under which the defendant was convicted must be held to be repugnant to the 5th Amendment, and as not embraced by nor within the power of Congress to regulate interstate commerce, but, under the guise of regulating interstate commerce, and as applied to this case, it arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant, Adair." [Italics ours.]

In 1914 in Coppage v. Kansas, 236 U. S. 1, 35 S. C. 240, supra, the Supreme Court had under consideration the right of a state to make it a crime to require an applicant for employment to agree

as a condition of employment not to join or become or remain a member of a labor organization. The only restriction upon the power of the state was that contained in the Fourteen Amendment to the Constitution of the United States which declares that no state shall deprive any person of liberty or property without due process of law, thus placing a limitation upon the states' power of legislation similar to that embodied in the Fifth Amendment affecting the power of the United States. The Supreme Court held that the facts could not be distinguished in principle from its decision in Adair v. U. S., supra, and not only declined to overrule that case, but also again
100 reaffirmed the constitutional right of freedom to contract and reaffirmed the invalidity of a statute, whether state or national, violating that right. The court in its decision propounded ten questions relating to the right to require an employee to forego his constitutional right to belong to a labor organization, and gave its answers thereto. I quote the last question and answer, as follows:

"Can the right of making contracts be enjoyed at all, except by parties coming together in an agreement that requires each party to forego, during the time and for the purpose covered by the agreement, any inconsistent exercise of his constitutional rights?

"These queries answer themselves. The answers, as we think, lead to a single conclusion: Under constitutional freedom of contract, whatever either party has the right to treat as sufficient ground for terminating the employment, where there is no stipulation on the subject, he has the right to provide against by insisting that a stipulation respecting it shall be a sine qua non of the inception of the employment, or of its continuance if it be terminable at will. It follows that this case cannot be distinguished from Adair v. United States.

"The decision in that case was reached as the result of elaborate argument and full consideration. The opinion states (208 U. S. 171): 'This question is admittedly one of importance, and has been examined with care and deliberation. And the court has reached a conclusion which, in its judgment, is consistent with both the words and spirit of the Constitution, and is sustained as well by sound reason.' We are now asked, in effect, to overrule it; and in view of the importance of the issue we have reexamined the question from the standpoint of both reason and authority. As a result, we are constrained to reaffirm the doctrine there applied."

The court, however, ex industria, stated that it is not dealing with a question of coercion of employees or other undue influence exercised against their right to belong to a labor organization. The court also stated: "* * * The decision in the Adair Case is in accord with the almost unbroken current of authorities in the state courts."
101 Justice Holmes, who dissented, contended that the decision in Adair v. U. S., supra, and in Lochner v. N. Y., supra, should be overruled. However, Justice Day, who also dissented, declared: "That the right of contract is a part of individual freedom within the protection of this Amendment [14th] and may not be arbitrarily interfered with, is conceded."

These two comparatively recent decisions of the Supreme Court (Adair v. U. S., and Coppage v. Kansas) expressly reaffirm the long-established principle that the right to contract upon terms mutually agreed upon is an inherent right of a human being expressly protected against infringement by the United States by the Fifth Amendment and by the states by the Fourteenth Amendment to the Constitution. In these two decisions it is fully recognized that the right to contract is not so absolute that it cannot be interfered with by the government, and that the ultimate question for the court in passing upon the validity of statutes which it is claimed have infringed upon or interfered with the right of contract is to determine whether or not the statute is an arbitrary or unreasonable interference with such right. It is clear, in the case at bar, that we are asked to enforce an order of the National Labor Relations Board which definitely requires the respondent to make a certain contract against its will and upon terms fixed by the Board. That this is an infringement of the respondent's liberty to contract on terms of its own choosing, and, consequently, of the guaranteed "liberty" of the respondent, is entirely clear. It is equally clear that the principles announced by the Supreme Court in Adair v. United States, and Coppage v. Kansas, supra, as to the Constitutional limitation placed upon the power of Congress by the Fifth Amendment, would prohibit the enforcement of such an order by the court, notwithstanding the fact that the order may have been made in strict accordance with the provisions of an Act of Congress.

Here it should be stated that I have not overlooked the fact that in the Adair case the court recognized that there might be a distinction between the rights of Adair, an employee, to discharge a subordinate and the right of the common carrier to do so.

As it claimed that the decision of the Supreme Court in the case of Texas & N. O. R. R. Co. v. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, supra, either overruled or so far modified these prior
102 decisions that they are no longer authoritative upon the questions involved in this proceeding, it is important to consider that case.

The case arose under the Railway Labor Act of 1926, § 2, sub. 3 (44 Stat. 577); 45 U. S. C. A. § 152, sub. 3. The court there said:

"The petitioners invoke the principles declared in Adair v. United States, 208 U. S. 161, and Coppage v. Kansas, 236 U. S. 1, but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers, but at the interference of the right of the employees to have representatives of their own choosing. As the carriers subject to the act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statutes on constitutional grounds."

This brief reference to the case of Adair v. United States, and Coppage v. United States, makes it entirely clear that the court had

no intention to depart from the principles involved in those cases, instead they are recognized but held inapplicable. It is therefore important to consider why such principles were inapplicable to that case with a view to ascertaining whether or not there was any intention to modify the previous decisions. As stated, the question under consideration was the validity and effect of the Railway Labor Act of 1926. This Act provided for a voluntary system of arbitration of labor disputes between employers and employees engaged in interstate commerce. In order to facilitate such arbitration the Act set up a board known as the United States Board of Mediation. Controversies were to be submitted to that Board by and in pursuance of a voluntary agreement entered into between the Railroad Company and its employees. The decision of the Board of Mediation was to be entered in the District Court as a final and binding award subject to contest before the District Court if either party so desired.

As an incident to this right to arbitrate the statute provided:

"Representatives, for the purposes of this Act, shall be designated by their respective parties in such manner as may be provided in their corporate organization or unincorporated association, or
103 by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

The Brotherhood of Ry. & S. S. Clerks brought an action in equity to enjoin the employers from interfering with their right to select representatives for the purposes of the Act, that is, representatives to negotiate an arbitration agreement. The trial court granted a temporary injunction prohibiting the carrier from "in any way or manner interfering with, influencing, intimidating, or coercing plaintiffs or any of its employees with respect to their free and untrammeled right of selecting or selecting or designating their representatives for the purpose of considering and deciding any and all disputes between said clerical employees and the defendant Railroad Company and from interfering with their free and untrammeled right of self organization."

It was claimed that the company had violated the injunction by recognizing the association of clerical employees of the Southern Pacific lines as the representative of the clerical employees of the company. Proceedings were brought to punish the Railroad Company and certain of its officers for contempt. The court adjudged them to be in contempt and directed that in order to purge themselves of the contempt the Railroad Company should disestablish the association of clerical employees, reinstate the Brotherhood as the representative of labor and restore to service and to stated privileges its employees who had been discharged by the Railroad Company. The temporary injunction was made permanent, and a motion in the lower court to vacate the order and contempt proceedings was denied (25 F. (2d) 873, 876). An appeal was taken from the adjudication of contempt and also from the final decree making the injunction permanent. The Circuit Court of Appeals affirmed the

decree for permanent injunction and sustained the order of the trial court fixing the terms under which the Railroad Company could purge itself of contempt as an "appropriate exercise of its authority in providing for the restoration of the status quo."

The Supreme Court quoted the third paragraph of Sec. 2 of the Railway Labor Act, supra, and stated, "The controversy is with respect to the construction, validity, and application of this
104 statutory provision." The Railroad Company contended "* * * that insofar as the statute undertakes to prevent either party from influencing the other in the selection of representatives, it is unconstitutional because it seeks to take away an inherent and inalienable right in violation of the First and Fifth Amendments of the Federal Constitution. * * *"

It will thus be observed that the contention of the Railroad Company was that it had an inherent and constitutional right to interfere with the selection of the representatives of its employees who were to bargain with it with reference to the arbitration of differences. The District Court and the Circuit Court of Appeals held that there was actual coercion of the employees in regard to the selection of their representatives and the Supreme Court declined to review those findings. Thus the question considered by the Supreme Court was whether the Railroad Company had a right to coerce its employees in the selection of their agents to represent them in this proposed settlement of disputes with the Railroad Company. It will be observed that this question of coercion was one which was expressly excluded from the decision of the Supreme Court in Coppage v. Kansas, supra, it being assumed in the majority opinion that coercion with reference to membership in a labor organization might be a proper subject for governmental control. In this view it is clear that the earlier cases did not bear directly upon the question considered by the Supreme Court in Texas & N. O. Railroad case. In the latter case it was held that the statute gave a right to the employees upon which they could seek the intervention of the court to enjoin the Railroad Company from an interference with that right. In considering the question Chief Justice Hughes, speaking for the court, said:

"While adhering in the new statute to the policy of providing for the amicable adjustment of labor disputes, and for voluntary submissions to arbitration as opposed to a system of compulsory arbitration, Congress buttressed this policy by creating certain definite legal obligations. The outstanding feature of the Act of 1926 is the provision for an enforceable award in arbitration proceedings. The arbitration is voluntary, but the award pursuant to the arbitration is conclusive upon the parties as to the merits and facts of the controversy submitted. Section 9 (45 U. S. C. A. § 159). The
105 award is to be filed in the clerk's office of the District Court of the United States designated in the agreement to arbitrate, and unless a petition to impeach the award is filed within ten days, the court is to enter judgment on the award, and his judgment is

final and conclusive. Retition for the impeachment of the award may be made upon the ground that the award does not conform to the substantive requirements of the act or to the stipulation of the parties, or that the proceedings were not in accordance with the act or were tainted with fraud or corruption. But the court is not to entertain such a petition on the ground that the award is invalid for uncertainty, and in such case the remedy is to be found in a submission of the award to a reconvened board or to a subcommittee thereof for interpretation, as provided in the act. Thus it is contemplated that the proceedings for the amicable adjustment of disputes will have an appropriate termination in a binding adjudication, enforceable as such. * * *

"It is thus apparent that Congress, in the legislation of 1926, while elaborating a plan for amicable adjustments and voluntary arbitration of disputes between common carriers and their employees, thought it necessary to impose, and did impose, certain definite obligations enforceable by judicial proceedings. The question before us is whether a legal obligation of this sort is also to be found in the provisions of subdivision third of section 2 of the act (45 U. S. C. A. § 152, subd. Third) providing that, 'Representatives, for the purposes of this Act, shall be designated by the respective parties * * * without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other. * * *

"In reaching a conclusion as to the intent of Congress, the importance of the prohibition in its relation to the plan devised by the act must have appropriate consideration. Freedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme. All the proceedings looking to amicable adjustments and to agreements for arbitration of disputes, the entire policy of the act, must depend for success on the uncoerced action of each party through its own representatives to the end
106 that agreements satisfactory to both may be reached and the peace essential to the uninterrupted service of the instrumentalities of interstate commerce may be maintained. There is no impairment of the voluntary character of arrangements for the adjustment of disputes in the imposition of a legal obligation not to interfere with the free choice of those who are to make such adjustments. On the contrary, it is of the essence of a voluntary scheme, if it is to accomplish its purpose, that this liberty should be safeguarded. The definite prohibition which Congress inserted in the act can not therefore be overrid'en in the view that Congress intended it to be ignored. As the prohibition was appropriate to the aim of Congress, and is capable of enforcement, the conclusion must be that enforcement was contemplated. * * *

"We entertain no doubt of the constitutional authority of Congress to enact the prohibition. The power to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection or advancement' (The Daniel Ball, 10 Wall. 557, 564, 19 L. Ed. 999; to

adopt measures 'to promote its growth and insure its safety' (County of Mobile v. Kimball, 102 U. S. 691 696, 697, 26 L. Ed. 238); to 'foster, protect, control, and restrain' (Second Employers' Liability cases, 223 U. S. 1, 47, 32 S. Ct. 169, 174, 56 L. Ed. 327, 38 L. R. A. [N. S.] 44). Exercising this authority, Congress may facilitate the amicable settlements of disputes which threaten the service of the necessary agencies of interstate transportation. In shaping its legislation to this end, Congress was entitled to take cognizance of actual conditions and to address itself to practicable measures. The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. * * * Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both."

107 It is thus apparent that the Supreme Court had under consideration in Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, supra, the single question of whether or not Congress in setting up a scheme for voluntary arbitration of railway labor disputes could prohibit interference by the one party, the Railroad Company, with the rights of the other parties, the employees to select those who were to represent them in the proposed arbitration, or it might be put thus, were the representatives selected by the employees for bargaining with the employer as to the proposed arbitration to be acceptable to the employer or to the employees? It is clear, as the court stated, that the principles announced in Adair v. United States, have no relevancy to this question. It is equally clear that Texas & N. O. R. Co. v. Brotherhood, etc., supra, does not modify nor overrule the earlier cases. In this regard it should be stated that some confusion arises in a consideration of this decision from the fact that the trial judge, in his adjudication of contempt in the Texas and New Orleans R. R. case required the Railroad Company to restore certain employees who had been discharged in violation of the injunction. This inherent power of the court to enforce its injunctive orders has nothing to do with the power of Congress to regulate or interfere with the right of contract. It is not altogether clear that the Supreme Court had before it the question of the validity of the order adjudging the Railroad Company guilty of contempt. In any event the decision on that question is irrelevant to the issue in the case at bar.

What the petitioner seeks in this case is the approval and the enforcement of an order which clearly violates the fundamental right of the respondent guaranteed to it by the Fifth Amendment to the Constitution. If we act upon the principles of constitutional law relating to the liberty to contract as announced by the Supreme Court

in Adair v. United States, supra, and Coppage v. Kansas, supra, our inquiry would end here for it was there held that an employer had a right to refuse to contract with a present or prospective member of a labor organization, if he so desired, and that an act of Congress, in one case, and a statute of a state, in the other, which prohibited that exercise of discretion, or choice, on the part of the employer was unconstitutional and void because a violation of the Fifth Amendment. Those decisions we have shown are still authori-
108 tative and therefore binding on this court. If these decisions are to be modified, such modification must be made by the Supreme Court itself. However, the scope of the argument, the vast importance of the subject, the different circumstances under which the constitutional guarantee is invoked, and the presumption in favor of the validity of an Act of Congress, all warrant, if they do not require, further consideration and discussion of the subject by this court.

The questions presented by the proceeding before us may be stated thus: Assuming that Congress is dealing with interstate commerce, is the Act in question a regulation of such commerce? If it is a regulation of interstate commerce and thus within the power delegated to the federal government by the people of the states (U. S. Const., Art. 1, Sec. 8, sub. 3), is that power limited by the inhibitions of Amendment V, or is the regulation of or restriction of the right or liberty to contract guaranteed by the Fifth Amendment so reasonable and necessary in the public interest as to override the private right thus guaranteed in the interest of the people as a whole?

The two questions are distinct, for the grant of power to the federal government over interstate commerce is limited by the terms of the grant itself to the regulation of such commerce (Const. Art. 1, Sec. 8, clause 3), and a further limitation is imposed by the Fifth Amendment. It has been expressly held by the Supreme Court that the commerce clause of the Constitution is limited by the restriction of federal power in Amendment V (Adair v. U. S., supra; Nebbia v. People of the St. of N. Y., 291 U. S. 502, 525). The basis of the inquiry, so far as the Fifth Amendment is concerned, has been stated by the Supreme Court, speaking through Justice Roberts, in Nebbia v. People of St. of N. Y., supra, at page 525, as recently as March 5, 1934, as follows:

"The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall
not be unreasonable, arbitrary, or capricious, and that the
109 means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other cir-

cumstances, because the reasonableness of each regulation depends upon the relevant facts.

"The reports of our decisions abound with cases in which the citizen, individual, or corporate, has vainly invoked the Fourteenth Amendment in resistance to necessary and appropriate exertion of the police power."

In order to consider these questions as presented by the facts in this case and the argument thereon by the parties, it is essential that the terms of the National Labor Relations Act, and the facts to which it is sought to be applied, be further stated.

The Act purports to confirm and protect the right of collective bargaining because of the strikes, industrial strife and unrest resulting from a denial by employers of that right, and the resultant effect on interstate commerce. The Act declares these results to be the burdening and obstructing of commerce by impairing the efficiency, safety, or operation of the instrumentalities of commerce, by affecting the flow of raw or manufactured products in commerce or the prices thereof or by causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce. It is declared that inequality of bargaining power affects the flow of commerce and tends to aggravate recurrent business depressions by depressing wages and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries (Sec. 1). Congress declares it to be the policy of the United States to "encourage the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

One of the avowed purposes of the Act is, then, to regulate interstate commerce by regulation of the method of entering into
110 labor contracts between employers and employees engaged in interstate commerce. The method of effecting this avowed purpose is to provide a system for the selection of labor representatives (Sec. 9); to declare that such representatives so selected "shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to pay, wages, hours of employment, or other conditions of employment" (Sec. 9), and to require the employer to deal with such representatives and them only. It is declared to be an unfair labor practice for the employer "To refuse to bargain collectively with the representatives of his employees * * *" (Sec. 8, sub. 5). The employer must not interfere in any manner with any labor organization or association or any member thereof. It is declared an unfair labor practice "By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization * * *," except that the employer can

agree with the representatives of its employees to employ members of that organization only (Sec. 8, sub. 3).

A National Labor Board is set up to prevent unfair labor practices. As defined in Sec. 8 it is empowered "* * * to prevent any person from engaging in any unfair labor practices affecting commerce." This power is declared to be exclusive and not to be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise (Sec. 10a). The unfair labor practices denounced by the Act all relate to interference of the employer with the labor union affiliations of its employees, present or prospective, or to his refusal to bargain with such representatives (Sec. 8).

The Act deals with the method of selecting the representatives of the employees for collective bargaining. The selection is to be by a majority "in a unit appropriate for such purposes." The Board set up by the Act is to decide whether "the appropriate unit for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

The Act provides for investigations, hearings, and orders by the Board concerning unfair labor practices, and for the issuance of an order requiring the employer "to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay as will effectuate the policies of this Act" (Sec. 10c), and to submit its order to the Circuit Court of Appeals for appropriate action (Sec. 10e, Sec. 9d) or, in vacation, to the District Court (Sec. 10e). The court is to enter a decree based upon the record certified to it by the Board, enforcing or embodying, and enforcing as so modified or setting aside in whole or in part the order of the Board. It is provided that "the findings of the Board as to the facts, if supported by the evidence, shall be conclusive" (Sec. 10e), and that, "no objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." The Act also provides for a similar review on petition of the aggrieved party (Sec. 10f). Such petitions are to be heard expeditiously and if possible within ten days after they are docketed (Sec. 10i).

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It is made a crime, punishable by fine and imprisonment, to interfere with the Board or its agencies in the performance of their duties (Sec. 12). It is declared that the Act shall not be construed so as to interfere with the right to strike (Sec. 13). The avowed and evident purpose of the Act is to protect labor union organizations and the members thereof, and to assure to them the right to bargain with their employers in their collective capacity. It is argued on behalf of the petitioner that as the right to bargain collectively is a well recognized right, Congress can protect that right. That is true, but in so doing Congress is at the threshold of private and personal rights with which its power to interfere is limited by

the Constitution. In that field the right of the individual is superior to the power of Congress, save in exceptional cases. The right of Congress begins only where these inherent and inalienable rights of the individual end. The right to bargain collectively in its essence is the right of a group of persons to select its own agents—an inherent right. When the form of legislation prohibits an individual worker from bargaining for the terms of his own employment, or from selecting his own agent for that purpose the Act destroys instead of protects the right upon which collective bargaining is recognized and sustained, that is, the right to contract by and through any chosen agent, or without any agent at all. The
Act, by prohibiting the employer from negotiating with any
112 individual or group of employees other than the selected representatives of a group or unit designated by the Board, in effect destroys the right of the minority of that unit and of all other units involved in the bargaining to bargain upon the terms of employment and to enter into such contract or choose such representatives as they may desire. The Act coerces both the employer and the minority of the bargaining unit in negotiating the terms of the contract of employment. It also denies to the majority the right to bargain except through representatives selected as required by the Act and as permitted by the Board. To repeat, it is one thing to declare and protect the right to bargain through selected and accredited agents—collective bargaining—and quite another to require collective bargaining, that is, to require that bargains may be made only through such agents and to designate the method and manner of their selection.

It is not an answer to the constitutional question which has arisen in this case to say that the Act protects an acknowledged constitutional right—the right to contract—because in doing so the Act destroys the very right it purports to protect as to the employers and as to all of the employees by requiring them to act only through agents. The right so denied or destroyed is one guaranteed by the constitution (Amendment V) from legislative or governmental interference.

The power of Congress to thus interfere with the right of contract in persons engaged in interstate commerce, must be found, if it exists at all, in its power to regulate commerce, and as so necessary an incident thereto as to justify it as a reasonable interference with the private right of contract for the public good. The question then recurs, is this Act a regulation of interstate commerce? The Railway Labor Act of 1926 has been sustained as a regulation of interstate commerce (Texas & N. O. Ry. v. Brotherhood, etc., supra) because that Act provided for the voluntary arbitration of labor disputes between employer and employee engaged in interstate commerce. It was held that such a scheme for settlement of disputes had a direct bearing upon interstate commerce. The conclusion seems inescapable, for that Act tended directly to prevent strikes by a method or means of settling or forcing a settlement of labor

disputes. Nothing more seriously impedes or obstructs interstate commerce than a strike of the persons transporting such com-
113 merce. The Act herein, if it be deemed also to have the same object of avoiding strikes, steps back a degree further and undertakes to prescribe the manner of entering into employment, and the duties of employer and employee after that contract of employment has been effected, and to prescribe the exclusive method of modifying such contract of employment. It recognizes and declares the right of the employee to strike (Sec. 13), and thus to coerce the employer. The Act thus recognizes the impossibility of constitutionally depriving the worker of that right.

Suspending for a moment the inquiry as to the limitations of Amendment V on the right of Congress to enact such legislation, I inquire whether this is so direct a regulation of interstate commerce as to come within the regulatory power of Congress over that commerce. This question in another aspect has recently been considered by the Supreme Court. The action involved the power of Congress to enact the Railroad Retirement Act of 1934 (48 Stat. 1283) 45 U. S. C. A. §§201–214 (Railroad Retirement Board v. Alton R., 295 U. S. 330, decided May 6, 1935).

The Supreme Court, in that case, speaking through Justice Roberts, held that the pension scheme set up by that Act was a violation of the due process of law clause of the Fifth Amendment, and also held that although the Act dealt entirely with the employees in interstate commerce, that "the act is not in purpose or effect a regulation of the interstate commerce within the meaning of the Constitution. * * * In the final analysis," Justice Roberts said, "the petitioners' sole reliance is the thesis that efficiency depends upon morale, and morale, in turn, upon sureness of security for the workers' old age. Thus pensions are sought to be related to efficiency of transportation and brought within the commerce power. * * * The question at once presents itself whether the fostering of a contented mind on the part of an employee by legislation of this type is in any just sense a regulation of interstate transportation. If that question be answered in the affirmative, obviously there is no limit to the field of so-called regulation. The catalogue of means and actions which might be imposed upon an employer in any business, tending to the satisfaction and comfort of his employees, seems endless. * * *

If contentment of the employee were an object for the attain-
114 ment of which the regulatory power could be exerted, the courts could not question the wisdom of methods adopted for its advancement. * * * The railway labor act was upheld by this court upon the express ground that to facilitate the amicable settlement of disputes which threatened the service of the necessary agencies of interstate transportation tended to prevent interruptions of service and was therefore within the delegated power of regulation. It was pointed out that the act did not interfere with the normal right of the carrier to select its employees or discharge them."

The Supreme Court stressed the proposition that it was one thing to uphold a scheme for voluntary arbitration and for voluntary pensions and quite a different thing to uphold a law making a system of pensions compulsory. Chief Justice Hughes dissented from this decision and three of the Justices concurred with him. He stated that "* * * provisions have been enacted to facilitate the amicable settlement of disputes and to protect employees in their freedom to organize for the purpose of safeguarding their interests," citing numerous cases, including Texas & N. O. Ry. v. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, supra. Justice Hughes stated:

"Laying that question to one side [the effect of excessive superannuation], I think that it is clear that the morale of railroad employees has an important bearing upon the efficiency of the transportation service, and that a reasonable pension plan by its assurance of security is an appropriate means to that end. * * * The argument in relation to voluntary plans discloses the fundamental contention on the question of constitutional authority. In substance, it is that the relation of the carriers and their employees is the subject of contract; that the contract prescribes the work and the compensation; and that a compulsory pension plan is an attempt for social ends to impose upon the relation noncontractual incidents in order to insure to employees protection in their old age. And this is said to lie outside the power of Congress in the government of interstate commerce. Congress may, indeed, it seems to be assumed, compel the elimination of aged employees. A retirement act for that purpose might be passed. But not a pension act. The government's power is
conceived to be limited to a requirement that the railroads
115 dismiss their superannuated employees, throwing them out
helpless, without any reasonable provision for their protection."

The Chief Justice agreed that some of the requirements of the railroad retirement act were arbitrary and beyond the power of Congress such as the requirement that the carriers pay retiring allowances to persons who were in the service of the railroad within one year prior to the enactment of the Act. On the whole, however, the Chief Justice, and the dissenting Justices, were of the opinion that under the power to regulate commerce Congress had the power to enact compulsory old-age pension laws for such employees as were engaged in interstate commerce. This dissent, while it does not destroy the controlling and binding effect of the decision of the court, does point to the difficulty involved in the attempt of a subordinate court to apply the principles enunciated in the Railroad Retirement Board v. Alton Ry. Co., 295 U. S. 330, supra, to an analogous but not identical situation. In the case at bar, for instance, it is clear that the National Labor Relations Act was intended to deal with indirect and remote effects upon interstate commerce such as the decrease in volume of interstate commerce due to the decreased buying power of the employees whose wages were reduced and the decreased trans-

portation due to the failure to produce raw and manufactured products for transportation. In short, the Act as construed by the Labor Relations Board was intended to apply to practically all the industries of the United States whether or not those were directly engaged in interstate commerce or not, and the Act on its face indicates and declares this general purpose of upbuilding interstate commerce by increasing purchasing power and increasing production of raw and manufactured products by stabilizing labor conditions. So construed, it is obvious that in the main the application of the Act to the regulation of interstate commerce is remote and indirect, but assuming, as I do, that the broad purposes of the Act may be narrowed to the field of interstate commerce itself, and made applicable alone to employers and employees actually engaged in interstate transportation, the question remains whether, as so limited and applied, the Act is a regulation of interstate commerce and within the legislative power of Congress for that reason. If the question is in doubt we are bound to resolve that doubt in favor of the
116 constitutionality of the Act. Can it be said then that the regulation of the employment of labor upon the transportation systems of the United States engaged in interstate commerce, for the purpose of preventing labor troubles in such transportation is not a reasonable regulation of interstate commerce? I conclude that the answer is not clear; that the Act of Congress so far as it seeks to thus regulate interstate commerce is within the realm of reasonable doubt and therefore the Act must be held by us to be within the delegated power of the federal government to regulate commerce unless the Fifth Amendment so limits the broad power given by the commerce clause of the Constitution so as to prohibit the enforcement of the Act in question.

Turning to the question of the Fifth Amendment, as I have already pointed out, the Supreme Court in two decisions, Adair v. United States, and Coppage v. Kansas, supra, dealing with an Act which would prohibit an employee from being discharged because of his labor union affiliations, and with legislation which restricted the right of the employer in making contracts of employment which would exclude labor unions, held both violative of the due process clause of the applicable amendments to the Constitution, the Fifth in the first instance, and the Fourteenth in the last. The restrictions in the Act under consideration are much more general and far reaching than the provisions in the Acts held invalid in those cases. The employer is not only prohibited by the Act in question from refusing to employ or from discharging an employee because of labor union connections, but is required to deal with such unions exclusively, or rather, with the chosen representatives thereof, in any modification of the original contract of employment. Instead of limiting the employer with relation to that one feature of the contract of employment and to a discharge for the one reason, this Act not only prohibits these two things, but also prohibits the employer from even entering into negotiations with any group of its employees other

than with the chosen representatives of such unit as is approved by the Labor Relations Board. I cannot see how such an Act can escape the condemnation of constitutional invalidity pronounced in the Adair v. United States, and Coppage v. Kansas, cases. In both those cases the question involved interstate commerce. In one (Adair v. U. S., supra) it involved the power of Congress
117 over interstate commerce. In both of them the same object sought to be effected in the National Labor Relations Board were involved in a minor degree. The doctrine announced in those cases has not been reversed, impaired or modified by any subsequent decision of the Supreme Court. Indeed it is difficult to see how such a fundamental doctrine bottomed upon a consideration of the inherent rights of man could be changed or modified without a violation of the constitution.

The difficulty facing Congress in dealing with the problem of labor engaged in interstate commerce is fundamental, and arises out of human and inalienable rights of the individuals engaged in that commerce. It is one thing to foster and encourage voluntary settlement of disputes as in the case of the Railway Labor Act of 1926, supra, but quite another to compel the entering into and modification of contracts of employment, and the settlement of disputes as to terms of employment by collective bargaining supervised by governmental agencies, and to make the decision of the governmental agency or Board effective by decree of court which would require, in the case at bar, that the employer be forced to employ individuals regardless of his desire or purpose to do so and upon terms dictated by the Board or by this court. On the other hand the employees are forced to conform to the negotiated contract regardless of their wishes in that matter unless they decline employment on any terms. As the Act is applied to the employer we have a fundamental interference with his right or liberty to contract. As applied to the worker we also have an interference with that right because he cannot enter into a contract without the intervention of agencies he may not choose. His sole remaining right is to refuse to accept the contract negotiated for him by foregoing or abandoning an employment which he may greatly desire on terms he could readily procure but for the inhibitions of the Act. I conclude, then, as held by the Supreme Court in Adair v. U. S., that by reason of the Fifth Amendment to the Constitution Congress has no power to compel employers and employees engaged in interstate commerce to negotiate their contracts of employment in a specific way and to prohibit the negotiation in any other way.

Thus far we must go in our decision because the act specifically authorizes the Labor Relations Board upon a proper investigation to require the carrier to restore discharged employees and re-
118 imburse them for the period of their enforced idleness. That power has been exercised by the Board in the case at bar, and the Board has petitioned this court for a decree enforcing that order. The question involved, then, is one squarely of constitutional

power on the part of Congress to require such reemployment and reimbursement through the medium of the Labor Relations Board and the decree of this court. These considerations alone require us to deny the application of the Board for an enforcement order.

In addition it should be stated that the respondent contends that inasmuch as the entire act is unconstitutional the provisions of the act vesting jurisdiction in this court would require a dismissal of the proceeding upon the ground that we have no jurisdiction. It is not necessary to go so far as that in this case and for that reason we must refuse to do so. I am not prepared to say that there is no portion of the act which is constitutional, and even if we should hold that the entire act is unconstitutional as the respondent contends, nevertheless the act provides for a review of the decision of the Labor Relations Board and the exercise of judgment on the part of the court in passing upon the order of the Board. This much is certainly within the power of Congress and therefore justifies and requires the court to consider the case (see Sec. 15 and above discussion thereof), and if need be deny the application upon constitutional grounds (see Sec. 15 of the Act). What I have heretofore said requires us to refuse the application of the Labor Relations Board for an enforcement order.

The respondent advances several other questions involving the validity of the order in question whether considered from a constitutional standpoint or from the standpoint of the facts involved in this particular proceeding. A consideration of these points involves further statement of the situation upon which the Labor Relations Board acted and upon which we are called to act. This statement will be made as brief as possible.

The employees of the Mackay Radio Corporation struck for the purpose of enforcing certain demands made by the union of its employees with relation to terms of employment. The strike was active for but a few days when the workers recognized that their cause was lost and entered into negotiations with an officer of the company concerning a return to their positions under the former terms of employment. This offer was accepted by the re-
119 spondent but it was stated by the officer who attended the meeting of the employees to arrange for the termination of the strike that eleven of the employees whose names were given, including the five employees ordered reinstated by the Board, would have to make application to the company for reemployment, and inferentially, that such application might be rejected. It is conceded that six of these employees were less competent and less desirable than the main body returning to work and less desirable than the five ordered reinstated by the Board in its order now under consideration. These five employees, although active in advancing the cause of the union and in promoting the strike, were concededly very efficient in the performance of their duties. The employer contends that these five, although remarkably competent operators, were inclined to disregard reasonable rules governing their employment and predicates the dis-

criminatory order against them upon the ground of inattention and insubordination rather than upon their union activities. The Board heard evidence upon this controversy and decided that the real reason for declining to reemploy these individuals was because of their union activities, and, consequently, held that the employer had violated subdivision 3 of section 8 of the Act. Upon this finding the order of restoration and reimbursement was predicated. I have not attempted to distinguish between the five employees ordered restored although one of them was in New York and did not participate in the strike activities in San Francisco. It was claimed by the employer that he overstayed his leave and this was the basis of discrimination against him. The respondent contends that the five individuals were not employees of the company because by striking they had terminated their employment and ended the relationship between themselves and the respondent; that therefore the Board had no auhority even under the terms of the act itself properly construed to consider the rights of these individuals or to order the respondent to employ them or to compensate them for the losses resulting from the strike and refusal to reemploy them. Respondent contends that the provision of the Act (Sec. 2, sub. 3), including within the definition of employee one who has ceased work because of a labor dispute and who has not obtained any other regular and substantially equivalent employment is not effective because Congress cannot by legislative fiat create a relation of master and servant which has been terminated in accordance with law.

120 I have thus far sufficiently indicated that the controversy adjudicated by the Board was as to whether or not the failure of the company to reemploy the five individuals was predicated upon their union activities. If the decision of the Board is to be sustained against the testimony of the witnesses produced by the company who gave their reasons to the contrary, and in the teeth of the fact that the employer not only reemployed all the labor union men who are on strike, other than these five, and gave as a reason for refusing to reemploy them the fact that it had employed others to take the places they had vacated and had guaranteed to these new employees the privilege of remaining in its employ if and when the strike was settled provided they desired so to do, it is difficult to conceive of a case in which the decision of the Board would not be final and conclusive upon the court in any case where a labor union employee has been discharged. The Board has predicated its conclusion upon the inference arising from the refusal of the respondent to reemploy these individuals solely from the fact that they were union employees who had been engaged actively in an unsuccessful strike and who desired and were refused reemployment. The difficulty does not end here because the order of the Board in effect requires the discharge of these men with whom respondent has entered into a binding contract and to whom it has pledged its faith that the settlement of the strike would not interfere with their right to continue in the employment of the company at San Francisco. Can the Board,

under the act, require the respondent to breach its contract with these employees who have assisted it in defeating the strike and also compel it to employ individuals who have struck and thus abandoned their work notwithstanding the choice of the company in preferring the former over the latter? This question, so stated, answers itself. Such a disregard of the right of individuals to enter into and observe contracts that they have made, protected as it is by fundamental constitutional guarantees, cannot be thus interfered with (Adair v. U. S., supra; Coppage v. Kansas, supra).

The case might be disposed of on the theory advanced by the respondent that the individuals who were ordered restored to their positions by the Board had themselves, by their voluntary act, ceased to be employees; consequently, that the act does not apply be-
121 cause the act authorized the reinstatement of employees and does not regulate the reemployment or the employment of laborers. Thus interpreted the act applies only to a situation where the employer has discharged an employee against the will of the employee and his reinstatement is directed in consequence. But to base our conclusion upon that theory in the case at bar would require us to ignore the declarations in the act itself that employees on a strike are to be considered still as employees within the meaning of the Act which declares the term "employee" as used in the Act to include "any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment." Act § 2, subd. 3. Consequently, the Board was acting well within the power Congress sought to vest in it and our decision must be based upon the broad ground that the act, according to its plain terms, is unconstitutional as violative of the Fifth Amendment in so far as it attempts to force upon an employer engaged in interstate commerce a contract of employment with those so engaged who have voluntarily terminated contract of employment.

The order requiring the employment of the five individuals named is beyond the power of the Board and cannot be enforced. Enforcement of the portion of the order requiring the employer to post notices that employees will not be discharged because of labor association activities must also be denied. The order enjoining the employer from discharging or threatening any of its employees for the reason that such employees have joined or assisted American Radio Telegraphists' Association, San Francisco Local No. 3, or otherwise engaged in union activity and from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self organization to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Sec. 7 of the National Labor Relations Act must be refused as an infringement of the due process clause of the Fifth Amendment, and

also because no cause for the issuance of the order is shown other than the refusal of the respondent to contract with the five individuals mentioned. I have held this refusal to be within the
122 rights of the respondent and consequently such refusal should not be made the basis of as injunctive order phrased in the language of the Act.

Since the foregoing was written our attention has been called to a recent decision of the Circuit Court of Appeals for the Second Circuit in a similar proceeding entitled National Labor Relations Board v. The Associated Press, No. J–139. In that matter an editor named Watson was ordered to be tendered employment, or restoration of employment because the Board, on petition of the American Newspaper Guild found that Watson had been discharged "because of his membership and activity in the American Newspaper Guild." This allegation was denied by the Associated Press, but was found to be true by the National Labor Relations Board and the court held in accordance with the express provisions of the National Labor Relations Act that such finding was conclusive on the court. The opinion states that:

"The order issued directed the respondent to cease and desist from discouraging membership in the American Newspaper Guild or in any other organization of its employees by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining the Guild or any other labor organization of its employees, and from in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining the Guild or any other labor organization of its employees, and from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights as guaranteed in Section 7 of the National Labor Relations Act. Notice of compliance with the order was to be posted in the New York office. Respondent was also ordered to offer full reinstatement to Watson and to make up his lost pay. * * *

"In its treatment of Watson, the respondent was found to have engaged in an unfair labor practice, which occurred in the course and current of commerce among the states and with foreign nations, and tended to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. * * *

"The findings of the Board as to the facts, if supported by evidence, are made conclusive by Sec. 10 (e). See also, Hel-
123 vering v. Rankin, 295 U. S. 123, 131; Florida v. United States, 292 U. S. 1, 12; Fed. Trade Comm. v. Algoma Lumber Co., 291 U. S. 67, 73."

The court sustained the constitutionality of the Act as to those engaged in interstate commerce on the authority of Texas & N. O. R. R. Co. v. Brotherhood, etc., 281 U. S. 548, 570, supra, and the case of Nebbia v. New York, 291 U. S. 502, cited, supra, and additional cases bearing less directly upon the question. The court concludes:

"This Act does not hamper the legitimate right of the employer, who may discharge his employees for inefficiency or any other cause agreeable to him, provided he does not use the power of discharge as a weapon for interfering with the right of employees to organize and bargain collectively. The employer retains full control to bargain with his employees over the wage he shall pay and the working conditions he shall furnish. He remains the master of the operation of his business.

"We think the order entered was validly made by the Board and must be enforced."

The respect due to the opinion of a court of coordinate jurisdiction requires some further observations along a line which has not been extensively discussed herein. That is, the practical effect of the order. At the threshold of the inquiry we have an employer forced to accept an employee he has discharged for reasons good and sufficient in his judgment. He submitted those reasons to the National Labor Relations Board which held them not to be the true reasons. The court necessarily holds the reasons advanced by the employer to be false, and that the true reason is the labor affiliations and activity of the employee. The employer is ordered to reemploy the discharged employee and also to refrain and desist from discharging this employee or any other for labor organization activities. If the employer now discharges this same employee upon the same grounds that seemed to it to be well founded is it not clear that it will face a charge of contempt of court for the violation of the order, perhaps preceded by another order of the National Labor Relations Board to restore, and another conclusive finding by it that the order was
124 not based upon the reason given but upon the ground of labor organization relationships? Certainly this is "government by injunction" in a new form. An injunction which prevents an employer from interfering with his own business, instead of an injunction prohibiting one from interfering with another's business. The employer is enjoined from exercising its constitutional right instead of from interfering with another constitutional right, if we accept the decision in Adair v. U. S., supra, as authoritative and binding, as we must.

Can we join the Circuit Court of Appeals of the Second Circuit in saying that the employer remains the "Master of the operation of his business", when he has lost the power to control his employees? The employees are cemented into their position not because of fidelity to their employer but because of fidelity to a labor organization. It was said long ago that "A man cannot serve two masters, for either he will hate the one and love the other, or else he will hold to the one and despise the other." (Matt. 6:27.) This principle of human conduct enunciated so long ago has found acceptance in the law of the land, particularly in the law of agency. As Judge Dillon says (1 Dillon Mun. Corp., 4th ed., § 444): "It has its foundation in the very constitution of our nature for it has authoritatively been de-

clared that a man cannot serve two masters, and is recognized and enforced wherever a well regulated system of jurisprudence prevails." See, City of Findlay v. Pertz, 66 Fed. 427.

As the Supreme Court said in Michoud et al. v. Girod et al., 4 How. 503: "The general rule stands upon our great moral obligation to refrain from placing ourselves in relations which ordinarily excite a conflict between self interest and integrity." Is it not clear that by the National Labor Relations Act, and its practical operation the federal government has assumed control of the business of the employer in one of its most vital features, namely, the tenure of its employees' jobs?

Another matter which is involved in a consideration of the order of the Board in the case at bar, has been mentioned but not discussed because of the conclusion as to the invalidity of the act under the Fifth Amendment, is that of the effect of the Seventh Amendment guaranteeing the right to a trial by jury, as to the payment of
125 wages during the period of unemployment. The finding of the Board being made conclusive on the reason for discharge and its adjudication as to the right to such compensation being predicated upon the terms of the act, we have a situation where the right to a jury trial upon the question of right of the employee to recover is denied by the act itself. An action for damages for a wrongful discharge of an employee is a form of action known to the common law and well within the right to a trial by jury as known at common law. Hence, the Act, so far as it authorizes the Board to assess damages without the intervention of a jury, is unconstitutional (see discussion of corresponding provisions of the Interstate Commerce Act as first enacted in 1887 [24 Stat. 379], before its amendment in 1888 [25 Stat. 855]; Western N. Y. & P. R. Co. v. Penn. Refining Co., 137 Fed. 343, 349. See also, 12 C. J. 131, § 193).

The application of the National Labor Relations Board should be denied and, as Judge Mathews concurs in this result, is denied.

Concurring opinion

MATHEWS, Circuit Judge (concurring):

I agree with Judge Wilbur that the National Labor Relations Act is not wholly void; that so much of it as vests in the United States Circuit Courts of Appeals jurisdiction to review orders of the National Labor Relations Board is valid; and that we, therefore, have jurisdiction of this proceeding. Whether in other respects the Act is valid or invalid, I think it unnecessary to decide. Assuming, without deciding, that, in all other respects, the Act is valid, the Board's petition should be denied, for the following reasons:

The Board's order is in five parts. The first [paragraph 1 (a)] is that respondent shall cease and desist "from discharging or threatening to discharge any of its employees for the reason that such employees have joined or assisted the American Radio Telegraphists' Association, San Francisco Local No. 3, or otherwise engaged

in union activities". There is neither allegation nor proof that respondent has discharged or threatened to discharge any of its
126 employees for this or any other reason.[23] The Act does not authorize the Board to order an employer to "cease and desist" from doing that which he is not even accused of.

The second part of the order [paragraph 1 (b)] is that respondent shall cease and desist "from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act."

There is no evidence that respondent has interfered with, restrained, or coerced any of its employees in the exercise of any of these rights. It is accused of having interfered with, restrained, and coerced A. B. Loudermilk, L. K. Bash, B. D. Phelps, L. N. Rone, and G. E. Palmer in the exercise of such rights, by refusing to reemploy them on October 8 and October 9, 1935, but these men, at that time were not employees of respondent. They had terminated their employment on October 5, 1935. The Board argues that they should nevertheless be considered employees, in view of the following definition in § 2, subdivision (3) of the Act:

"The term 'employee' shall include . . . any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment. . . ."

The trouble with this argument is that there is no allegation, no proof, and no finding that Loudermilk, Bash, Phelps, Rone, or Palmer ceased work "as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice." There is evidence that they participated in a strike, but no evidence that the strike was called, or that they participated therein, "as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice." The evidence shows that, at the time of, and for some months prior to, the calling of the strike, certain negotiations were pending between the American Radio Telegraphists' Association and respondent, but it does not show that there was any "current labor dispute," or that respondent had
127 engaged or was then engaging in any "unfair labor practice."

The strike appears to have been called, not "as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice," but because, as stated by the Board in its findings of fact, the negotiators representing the Association "decided that a strike was advisable in view of the unsatisfactory state of the negotiations." Since, on the facts, Loudermilk, Bash, Phelps, Rone,

[23] The original complaint contained such an allegation. The amended complaint does not.

and Palmer do not come within the above quoted definition, it is unnecessary to consider respondent's contention that § 2, subdivision (3), of the Act is unconstitutional and void.

Since these men were not employees at the time they were alleged to have been interfered with, restrained, and coerced, such alleged interference, restraint, and coercion did not constitute an unfair labor practice, within the meaning of the Act. Therefore, in ordering respondent to cease and desist from such alleged interference, restraint, and coercion, the Board has exceeded its authority.

The third part of the order [paragraph 2 (a)] is that respondent shall offer to Loudermilk, Bash, Phelps, Rone, and Palmer "immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed." The fourth part of the order [paragraph 2 (b)] is that respondent shall make whole the said Loudermilk, Bash, Phelps, Rone, and Palmer "for any loss of pay they have suffered by reason of their discharge by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate stated in the findings of fact as the rate each was paid at the time of his discharge, less the amount earned subsequent to discharge as shown in the findings of fact." These parts of the order are based on the assumption that Loudermilk, Bash, Phelps, Rone, and Palmer were discharged by respondent. The assumption being false, these parts of the order are unwarranted.

The fifth part of the order [paragraph 2 (e)] is that respondent shall post and keep posted for thirty days, in conspicuous places in its various offices, notices stating "that the respondent will not discharge or in any manner discriminate against members of, or
those desiring to become members of, the American Teleg-
128 raphists' Association or persons assisting said organization
or otherwise engaging in union activity." This requires, not merely a statement that respondent will not discharge or discriminate against its employees because of their membership in the Association, or because of their engaging in union activities, but a statement to the effect that it will not, for any cause whatsoever, discharge or discriminate against any member of the Association, or any person desiring to become a member thereof, or any person engaging in union activity.

The Act does not authorize or purport to authorize the Board to require any employer to make or post any such statement. It does provide that, where any employer is found to have engaged in an unfair labor practice, the Board may require "such affirmative action . . . as will effectuate the policies of this Act," but to require the posting of such a notice as the Board has prescribed in this case would not and could not "effectuate the policies of this Act" or of any legislation which Congress might constitutionally enact. This part of the order is obviously unwarranted.

The petition should be denied.

Dissenting opinion

GARRECHT, Circuit Judge (dissenting):

The increase and magnitude of the conflicts between employers and workers are appalling. In many instances much loss and suffering are precipitated upon those in no sense responsible for these difficulties and at times the general welfare of the country becomes involved in the struggle.

With deference to the very able opinion of the senior judge and of my brother who concurs in the result, I feel that a decision which deprives Congress of the power to establish a department of government clothed with authority to compose the increasing strife between employers and employees, which admittedly adversely affects interstate commerce, is to hamper the general welfare by crippling the Government in the exercise of a most beneficial, even necessary, function in the modern field of industrial employment.

The necessity for legislation such as the National Labor Relations Act (48 Stat. 449; 29 U. S. C. A., § 151, et seq.) is becom-
129 ing increasingly apparent. The enactment of this statute by Congress was not beyond its power under the Commerce Clause of the Constitution.

The Congress has authority to maintain the orderly conduct of interstate commerce by providing for the peaceful settlement of disputes which threaten it. Texas & New Orleans R. R. Co. v. Brotherhood of Railway Clerks, 281 U. S. 548.

The Act (§ 10 (e)) provides that "The findings of the Board as to the facts, if supported by evidence, shall be conclusive." See National Labor Relations Board v. National New York Packing & Shipping Co., 86 F. (2d) 98.

The Board found that the Mackay Radio & Telegraph Company was a corporation engaged in interstate commerce; that it had violated the Act, in that it was guilty of unfair labor practices by interfering with the right of its employees to organize and by discrimination with regard to hire and tenure of employment and other conditions so as to discourage membership in labor organizations. There is evidence to sustain the findings.

The evidence is convincing that the five employees were discharged by the company because of their efforts and prominence in the organization work of the union and with the strike against the company.

Four of these employees were classed as operators earning the top salary. Respondent's traffic manager in immediate charge of the San Francisco operators testified that they were among his best operators. A supervisor of the company testified that the other employee discharged was also a first-class operator. At no time during the strike, in the period following it, or before the Board, was the efficiency of these employees questioned.

The evidence further shows that these five operators were all members of the San Francisco Local of the American Radio Telegraphists' Association, and active in organization work. Most of them

were members of the grievance or relations committee which had conducted the first negotiations with respect to a proposed general agreement with the Mackay Company relating to wages and conditions of employment. Some were active leaders in the strike and some were on the administrative committee which contacted
130 all the Mackay employees. In fact, the San Francisco Local, by reason of its strength and active leadership was the dominant unit and the center of A. R. T. A. activity. In eliminating these leaders the Company delivered an effective blow at the whole national organization.

On rather technical grounds it is sought to eliminate the order of the Board which requires that respondent shall cease and desist "from discharging or threatening to discharge any of its employees for the reason that such employees have joined or assisted the American Radio Telegraphists' Association, San Francisco Local No. 3, or otherwise engaged in union activities." It is suggested that while the original complaint contained the allegation that the respondent was guilty of these acts, the amended complaint does not. However that may be, the answer of respondent filed in this court denied that they were guilty of these charges and evidence in relation thereto was received at the hearing and no objection on this ground is made by respondent. The Act specifically provides that "No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." After the evidence was taken the Board moved to have the pleadings conform to the evidence and in that connection filed the amended complaint. It cannot fairly be said that thereby the charge which had been the subject of much evidence and which is denied in the answer and which finds place in the order should be totally disregarded upon this court's own motion.

It is suggested in the concurring opinion that these men were not employees within the meaning of the Act and were not discharged, but quit. As pointed out by the main opinion, to reach such a conclusion is to ignore the declaration of the Act itself that employees on a strike are to be considered still as employees.

The main opinion, however, by disregarding or discrediting the evidence for the employee operators and by accepting with innocent credulity the explanation for the refusal to re-employ, as given by the agents for the respondent, reached the conclusion that the employees were deprived of their positions for causes entirely independent of any labor difficulties or organization activities; and makes the further statement that to deprive the employer of his inalienable right to hire and fire at will is to violate funda-
131 mental constitutional guarantees, particularly the Fifth Amendment. The main opinion holds explicitly "that by reason of the Fifth Amendment to the Constitution Congress has no power to compel employers and their employees engaged in interstate

commerce to negotiate their contracts of employment in a specific way and to prohibit negotiation in any other way." As will be pointed out hereafter even the authorities relied upon in the main opinion do not go to any such extreme.

There is a canon of statutory construction formulated by the courts, often more honored in its breach than in its observance, that no law should be set aside as unconstitutional unless it was clearly so beyond reasonable doubt.

As early as 1811 Chief Justice Tilghman of Pennsylvania in Comm. v. Smith, 4 Bin. 117, while asserting the power of the court to hold laws unconstitutional, but declining to exercise it in this particular case, stated the rule as follows:

"* * * for weighty reasons, it has been assumed as a principle, in construing constitutions, by this court, and by every other court of reputation in the United States, that an act of the legislature is not to be declared void unless the violation of the Constitution is so manifest as to leave no room for reasonable doubt."

In Dartmouth College v. Woodward, 4 Wheat. 517, Mr. Chief Justice Marshall took occasion to state, at page 625:

"On more than one occasion, this court has expressed the cautious circumspection with which it approaches the consideration of such questions; and has declared, that in no doubtful case, would it pronounce a legislative act to be contrary to the constitution."

Again, in Ogden v. Saunders, 12 Wheat. 213, 270, it was said:

"But if I could rest my opinion in favor of the constitutionality of the law on which the question arises, on no other ground than this doubt so felt and acknowledged, that alone, would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body, by which any law is passed, to presume in favor of its validity, until a violation of the constitution is proved beyond all reasonable doubt."

132 Also, in Adkins v. Children's Hospital, 261 U. S. 525, 544, the Supreme Court stated:

"The judicial duty of passing upon the constitutionality of an act of Congress is one of great gravity and delicacy. The statute here in question has successfully borne the scrutiny of the legislative branch of the government, which, by enacting it, has affirmed its validity; and that determination must be given great weight. This Court, by an unbroken line of decisions from Chief Justice Marshall to the present day, has steadily adhered to the rule that every possible presumption is in favor of the validity of an act of Congress until overcome beyond rational doubt."

The Act here in question has been before many District Courts that have held it to be constitutional. Their decisions are not binding upon this court, still many of the judges rank high for their ability, and the well argued presentations of their views are worthy of respect and have served to strengthen by own opinion that it cannot be said that there exists between the Constitution and this

law and beyond all reasonable doubt a clear and unmistakable conflict. Moreover other Circuit Courts of Appeals of equal standing and authority with this court likewise have sustained the constitutionality of the acts of the Board under the Act. National Labor Relations Board v. The Associated Press, 85 F. (2d) 56 (C. C. A. 2); National Labor Relations Board v. Washington, Virginia and Maryland Coal Co., 85 F. (2d) 990 (C. C. A. 4); Bradley Lumber Co. v. National Labor Relations Board, 84 F. (2d) 97 (C. C. A. 5).

In giving consideration to these decisions, which harmonize with my own views, I feel that I cannot hold that the action of the Board in the case at bar was unconstitutional, or that the order prayed for should not be granted.

The main opinion holds that the action of the National Labor Relations Board violates the Fifth Amendment to the Constitution. This conclusion is rested on the authority of Adair v. U. S., 208 U. S. 161, and Coppage v. Kansas, 236 U. S. 1. In both of these cases, as the main opinion suggests, the question before us was involved only in a minor degree. The Adair case relies upon the decision of the court in Lochner v. New York, 198 U. S. 45.

133 As this latter case is made the basis for the decisions relied upon in the main opinion the fact should not be lost sight of that there a state statute purporting to be a health regulation passed by virtue of the police power was involved. The National Labor Relations Act, on the other hand, was passed as a regulatory measure applicable to interstate commerce, a field of legislation over which Congress has been given jurisdiction by the Constitution. The Federal power to regulate instrumentalities of interstate communication such as telegraph companies or radio broadcasting stations has been upheld. Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U. S. 1, 9–10; Fed. Trade Comm. v. Nelson Bros. Co., 289 U. S. 266, 279; Fishers Blend Station v. Tax Com'r., 297 U. S. 650.

That the court in the Adair case did not intend to give that decision the wide sweep that is taken in the main opinion here is clear from the restricted language used. There it was said (p. 180):

"It results, on the whole case, that the provision of the statute under which the defendant was convicted must be held to be repugnant to the Fifth Amendment and as not embraced by nor within the power of Congress to regulate interstate commerce, but under the guise of regulating interstate commerce and as applied to this case it arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant Adair."

This limitation was also stressed in the dissenting opinion (p. 181):

"The principle upon which the opinion is grounded is, as I understand it, that a labor organization has no legal or logical connection with interstate commerce, and that the fitness of an employe has no dependence or relation with his membership in such organization. It is hence concluded that to restrain his discharge merely on account of such membership is an invasion of the liberty of the car-

rier guaranteed by the Fifth Amendment of the Constitution of the United States. The conclusion is irresistible if the propositions from which it is deduced may be viewed as abstractly as the opinion views them. May they be so viewed?"

134 Indeed, the decision in the Adair case itself indicates that circumstances such as confront us here, where interstate commerce is involved and the rights of the general public prejudiced, might justify a different holding. This is easily discerned in the quotations given in the main opinion. Speaking of a section of the Act of Congress there under consideration, the following was said (p. 172):

"The first inquiry is whether the part of the 10th section of the act of 1898 upon which the first count of the indictment was based is repugnant to the 5th Amendment of the Constitution, declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment. Such liberty and right embrace the right to make contracts for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject-matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interests, or as hurtful to the public order, or as detrimental to the common good."

We have emphasized the portion to which we direct attention as sustaining our view. We quote further from the main opinion (p. 173 of 208 U. S.):

"'"The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. Allgeyer v. Louisiana, 165 U. S. 578. Under that provision no State can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right."'"

Here, again, we have emphasized a modifying clause which would distinguish the cases relied upon from the case at bar.

To confine this opinion to reasonable limitations prevents reviewing the many cases in which employment relations have been
135 subjected to regulations and where parties have invoked the due process clauses of the Fifth and Fourteenth Amendments without success. A few may be mentioned to indicate the wide field covered by these decisions. Among those dealing with statutes prescribing the character, method, and time of payment of wages may be included: McLean v. Arkansas, 211 U. S. 539; Knoxville Iron Co. v. Harbison, 183 U. S. 13; Keokee Consolidated Coke Co. v. Taylor, 234 U. S. 224; Erie R. R. Co. v. Williams, 233 U. S. 685; Statutes fixing hours of labor; Holden v. Hardy, 169 U. S. 366; Bunting v. Oregon, 243 U. S. 426.

The employment activities of the workers here involved concededly were in the field of interstate commerce which makes the Act even more applicable.

The power of Congress to regulate commerce is paramount and is unrestrained, except by limitations in the Constitution upon its authority. The only limitation presented by the Constitution is that the laws enacted shall be necessary and proper, which question generally is exclusively within the province of Congress to determine.

The full extent of the burden of these industrial disputes is not always realized, but upon occasion the interruption is so acute and of such consequence to the country as to engage the attention of members of the Cabinet and even the President himself.

Investigation of the causes of most of these industrial disturbances show that controversies as to wages, hours of work, or matters of working conditions and the insistence of employees of the right to organize for self-protection have brought about most of these conflicts. With the development of modern industry the necessity for such organization has become more apparent and the right of the workers to participate in such activities has been recognized.

As Mr. Chief Justice Taft said in American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 209:

"They [labor unions] were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable
136 to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers an opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court."

The National Labor Relations Act was enacted to relieve the burdens or obstructions placed on interstate commerce under similar circumstances and conditions. In Chicago, B. & Quincy R. R. Co. v. McGuire, 219 U. S. 549, in an opinion by Mr. Justice Hughes, it is said (pp. 566–568):

"It has been held that the right to make contracts is embraced in the conception of liberty as guaranteed by the Constitution. Allgeyer v. Louisiana, 165 U. S. 578; Lochner v. New York, 198 U. S. 45; Adair v. United States, 208 U. S. 161. In Allgeyer v. Louisiana, supra, the court, in referring to the Fourteenth Amendment, said (p. 589): 'The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he

will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.' But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed
137 in the interests of the community. Crowley v. Christensen, 137 U. S. p. 89; Jacobson v. Massachusetts, 197 U. S. p. 11. 'It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence: to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally speaking, every citizen has a right freely to contract for the price of his labor, services, or property.' Frisbie v. United States, 157 U. S. pp. 165, 166.

"The right to make contracts is subject to the exercise of the powers granted to Congress for the suitable conduct of matters of national concern, as for example the regulation of commerce with foreign nations and among the several states. Addyston Pipe & Steel Co. v. United States, 175 U. S. pp. 228–231; Patterson v. The Eudora, 190 U. S. 174–176; Atlantic Coast Line Co. v. Riverside Mills, 219 U. S. 186; Louisville & Nashville R. R. Co. v. Mottley, decided this day, ante, p. 467."

In the case of Atlantic Coast Line Railroad Company v. Riverside Mills, 219 U. S. 186, 201–203, the court there said:

"It must be conceded that the effect of the act in respect of carriers receiving packages in one State for a point in another and beyond its own lines, is to deny to such an initial carrier the former right to make a contract limiting liability to its own line. This it is said is a denial of the liberty of contract secured by the Fifth Amendment to the Constitution. To support this counsel cite such cases as Allgeyer v. Louisiana, 165 U. S. 589, Lochner v. New York, 198 U. S. 45, and Adair v. United States, 208 U. S. 161.

"This power to regulate is the right to prescribe the rules under which such commerce may be conducted. 'It is,' said Chief Jus-
138 tice Marshall, in Gibbons v. Ogden, 9 Wheat. 1, 197, 'a power vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the

exercise of the power as are found in the Constitution of the United States.' It is a power which extends to the regulation of the appliances and machinery and agencies by which such commerce is conducted. * * * In The Employers' Liability Cases, 207 U. S. 463, 495, power to pass an act which regulated the relation of master and servant, so as to impose on the carrier, while engaged in interstate commerce, liability for the negligence of a fellow-servant, for which at common law there was no liability, and depriving such carrier of the common-law defense of contributory negligence save by way of reduction of damages, was upheld. In Addyston Pipe Co. v. United States, 175 U. S. 211, and Northern Securities Co. v. United States, 193 U. S. 197, it was held that this power of regulation extended to and embraced contracts in restraint of trade between the States.

"It is obvious, from the many decisions of this court, that there is no such thing as absolute freedom of contract. Contracts which contravene public policy cannot be lawfully made at all, and the power to make contracts may in all cases be regulated as to form, evidence, and validity as to third persons. The power of government extends to the denial of liberty of contract to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interests. Undoubtedly the United States is a government of limited and delegated powers, but in respect of those powers which have been expressly delegated, the power to regulate commerce between the States being one of them, the power is absolute except as limited by other provisions of the Constitution itself.

"Having the express power to make rules for the conduct of commerce among the States, the range of Congressional discretion as to the regulation best adapted to remedy a practice found inefficient or hurtful, is a wide one. If the regulating act be one directly applicable to such commerce, not obnoxious to any other provision of the Constitution, and reasonably adapted to the purpose by reason of legitimate relation between such commerce and the rule pro-
139 vided, the question of power is foreclosed. 'The test of power,' said Mr. Justice White, speaking for this court in the Employers' Liability Cases, cited above, 'is not merely the matter regulated, but whether the regulation is directly one of interstate commerce, or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce.'"

In the recent case of Nebbia v. New York, 291 U. S. 502, Mr. Justice Roberts thus summarized the principles involved: "The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases" (pp. 527–528). "Neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm" (p. 523). "The Fifth Amendment, in the field of fed-

eral activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power * * *. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained" (p. 525).

It is urged, and supported with considerable force of reason, that the Adair, Coppage, and Lochner cases, which were decided by a divided court, insofar as they may be applicable to the case at bar, have been modified or overruled by the later case of Texas & New Orleans R. R. Co. v. Brotherhood of Railway Clerks, 281 U. S. 548, which was decided in 1930 by a unanimous court. From a careful reading and a comparison of all of these opinions this conclusion seems well founded.

The case of Texas & New Orleans R. R. Co. v. Brotherhood of Railway Clerks, supra, is in many particulars strikingly similar to the case at bar. In asserting the same principle with respect to the constitutional issue, the court, speaking through Mr. Chief Justice Hughes, there said (p. 570):

"It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife."

It was there urged that the cases of Adair and Coppage were controlling, but in disposing of that argument the court said (pp. 570-571):

"The petitioners invoke the principle declared in Adair v. United States, 208 U. S. 161, and Coppage v. Kansas, 236 U. S. 1, but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them."

So in this case the Act does not interfere with the normal right of an employer, but is designed to prevent him from interfering with the rights of the employees to organize themselves into effective unions and to be members thereof.

We are concerned here only with the right of the employee, as stated in the Act, "to self-organization, to form, join, or assist labor organizations * * * and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection," and without the discrimination of the employer "in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization," rights which are guaranteed by the Act. As we have seen, protection of these rights is not a new or unusual principle, but one which

has been developed by statute and decision over a long period of years.

Furthermore it was the purpose of the Act, as already stated, to relieve interstate and foreign commerce from the burdens caused by labor disputes. We quote from Section 1:

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial
141 strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees."

It is appropriate here to quote again the language of Mr. Chief Justice Hughes in Texas & New Orleans R. R. Co. v. Brotherhood of Railway Clerks, supra, at page 570:

"We entertain no doubt of the constitutional authority of Congress to enact the prohibition. The power to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection and advancement' (The Daniel Ball, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (County of Mobile v. Kimball, 102 U. S. 691, 696, 697); to 'foster, protect, control, and restrain' (Second Employers' Liability Cases, 223 U. S. 1, 47). Exercising this authority, Congress may facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation. In shaping its legislation to this end, Congress was entitled to take cognizance of actual conditions and to address itself to practicable measures."

In its effort to distinguish the Texas & N. O. R. R. Co. case, supra, from the present suit, the main opinion seems somewhat inconsistent. The opinion points out that in the railroad case, "it was held that the statute gave a right to the employees upon which they could seek the intervention of the court to enjoin the Railroad from an interference with that right." In that case, the Supreme Court held, at page 560 of the opinion, that the discharge from the service of the Railroad Company of leading representatives of the Brotherhood helped to give "support, despite the attempted justification of these proceedings, to the conclusion of the courts below that the Railroad Company and its officers were actually engaged in promoting the organization of the Association in the interest of the Company and in opposition to the Brotherhood, and that these activities constituted an actual interference with the liberty of the clerical employees in the selection of their representatives."

142 In another portion of the main opinion in this case, it is conceded that, "as the right to bargain collectively is a well recognized right, Congress can protect that right."

In other words, the main opinion concedes the power of Congress to protect employees from coercion—by means of dismissal or re-

fusal to re-employ—in connection with the employees' right to select their own agents to represent them in negotiating an arbitration agreement. But the main opinion denies the power of Congress to protect employees from coercion—likewise by means of dismissal or refusal to re-employ—in connection with another conceded right of the employees; namely, that of collective bargaining.

The parallelism between these two types of labor rights is, in my opinion, inescapable. Each should be equally within the protection of Congressional action against coercion by the employers, in the form of dismissal or, as here, cutting off the employees by reason of difficulties arising out of the strike, particularly sought to be avoided by the Act.

The main opinion argues for absolute liberty to contract but the irony of the situation is that under existing economic conditions such freedom as between master and worker is mostly mythical. The only liberty interfered with is the liberty of the strong to oppress the weak.

The main opinion contends that any limitation on the freedom of contract between employee and employer is obnoxious to the constitution. However, legislatures have frequently passed such statutes which courts have upheld upon the theory, as stated by Mr. Chief Justice Taft (Adkins v. Children's Hospital, 261 U. S. 525, 562), that the lawmaking body might proceed on the assumption that employees, in some circumstances, "are not upon a full level of equality of choice with their employer and in their necessitous circumstances are prone to accept pretty much anything that is offered. They are peculiarly subject to the over-reaching of the harsh and greedy employer." Indeed, as pointed out by Mr. Justice Holmes (Ibid, p. 571), it has been asserted by a noted authority that it is the doctrine of modern economists of all schools that "freedom of contract is a misnomer as applied to a contract between an employer and an ordinary individual employee."

143 Economic domination must be kept within definitely just limits, and where necessary, government, where possible, should exercise effective control and where the evil embraces the field of interstate commerce the right so to do within the constitution cannot be questioned.

To avoid the force and effect of the decisions which sustain the power of Congress in labor matters where the effect on interstate commerce is direct, the main opinion has sought to narrow the purpose of the National Labor Relations Act, in an unwarranted degree. Says the opinion:

"In the case at bar, for instance, it is clear that the National Labor Relations Act was intended to deal with indirect and remote effects upon interstate commerce, such as the decrease in volume of interstate commerce due to the decreased buying power of the employees whose wages were reduced and the decreased transportation due to the failure to produce raw and manufactured products for transportation."

A reading of the Act itself shows how erroneous is this restricted view. Says the Act:

"Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce."

To verify the existence of the evils enumerated which are sought to be eliminated we need only to take judicial notice of what is going on all about us. In these struggles and conflicts between
144 employers and workers, the loss and suffering entailed thereby perhaps fall most heavily upon the innocent public. Regulation which will minimize these evils is a necessity.

In the main opinion the rights of the master are exaggerated and distorted; while the equal rights of the employee are waived aside or overlooked, and, more significantly still, the rights of the public in a controversy such as this are ignored and utterly disregarded. Labor troubles involving the Mackay Radio and Telegraph Company, like those involving ships, railroads, and other public service ownerships which impair the efficiency of the service cannot but affect the general public. The employers may own the wires, ships, and rails, but the public has a right to have them operate efficiently for the general welfare and the Congress has a duty to maintain this right by proper legislation and prevent unfair or capricious interference with or obstruction of the usual flow of this commerce.

So here, the National Labor Relations Act "does not interfere with the normal exercise of the right" of the employer to hire or discharge his employees for incompetency, dishonesty, neglect of duty, or for any ordinary cause, but is aimed to protect employees in their rights as set forth in the Act.

The main opinion also sustains the contention of respondent that the order of the Board requiring it to pay to the wrongfully discharged employees an amount equal to what they would have earned had they not been discharged is a violation of the Seventh Amendment which guarantees the right of trial by jury. This is a proceeding in equity and the primary relief sought is the reinstatement of the discharged employees and the award for wages at the regular rate of salary for the time out by reason of the wrongful discharge is an incident to the equitable relief granted. The Supreme Court said in Shields v. Thomas, 59 U. S. 253, 261-262:

"We can perceive no force in the effort to sustain this objection by citation of the 7th amendment of the Constitution of the United States, which provides, 'that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.' This provision, correctly interpreted, cannot be made to embrace the established, exclusive jurisdiction of
145 courts of equity, nor that which they have exercised as concurrent with courts of law; but should be understood as limited to rights and remedies peculiarly legal in their nature, and such as it was proper to assert in courts of law, and by the appropriate modes and proceedings of courts of law."

In Texas & N. O. R. R. Co. v. Brotherhood of Railway Clerks an order under the Railway Labor Act of 1926, requiring reinstatement, with back pay, of three workers discriminatorily discharged "in violation of the law and of the injunction" (25 F. (2d) at p. 878), was held not to have gone "beyond the proper enforcement" of the Act (281 U. S. at p. 571).

The contention made, based upon the violation of the Seventh Amendment, has been admirably answered in the case of Agwilines, Inc. v. National Labor Relations Board, decided by the Circuit Court of Appeals for the Fifth Circuit on December 22, 1936, and which became available for study only after the preceding paragraphs had been written. Indeed, it would have been sufficient to have rested this dissent on the decision in that case, the facts of which were similar to the one at bar.

The petition should be granted.

[File endorsement omitted.]

146 In United States Circuit Court of Appeals for the Ninth Circuit

No. 8137

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

MACKAY RADIO AND TELEGRAPH COMPANY, RESPONDENT

Judgment

Filed January 11, 1937

Upon petition to enforce an order of the National Labor Relations Board.

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this court, that the said petition to enforce the order of the National Labor Relations Board in this cause be, and hereby is denied.

[File endorsement omitted.]

147 [File endorsement omitted.]

148 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Notice of motion

To J. HAROLD MERRICK, LOUIS W. MYERS, HOMER I. MITCHELL,
Attorneys for Respondent, 433 South Spring Street, Los Angeles, California.

Please take notice that the within Petition of National Labor Relations Board for Leave to Adduce Additional Evidence and for Rehearing will be called up for hearing before the United States Circuit Court of Appeals for the Ninth Circuit, at the United States Court House, San Francisco, California, on the 15th day of February 1937, at 10 o'clock in the forenoon of said day, or as soon thereafter as counsel may be heard.

(s) CHARLES FAHY,
Attorney for Petitioner.

149 AFFIDAVIT AS TO SERVICE

DISTRICT OF COLUMBIA,
City of Washington, ss:

Robert R. Watts, being first duly sworn, deposes and says that he is one of the attorneys for the Petitioner herein; that on the 5th day of February 1937, he mailed postpaid, bearing Government frank, by registered air mail, a copy of the within Petition of National Labor Relations Board for Leave to Adduce Additional Evidence and for Rehearing, to J. Harold Merrick, Louis W. Myers, and Homer I. Mitchell, attorneys for the respondent, 433 South Spring Street, Los Angeles, California.

(s) ROBERT B. WATTS,
Attorney for Petitioner.

Subscribed and sworn to before me this 5th day of February 1937.
[SEAL] HAROLD G. WILSON,
Notary Public, District of Columbia.
My commission expires May 15, 1941.

150 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Petition of National Labor Relations Board for leave to adduce additional evidence and for rehearing; and notice of motion

Filed Feb. 9, 1937

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board (hereinafter referred to as the Board) respectfully petitions this Honorable Court for leave to adduce additonal evidence and for a rehearing in the above entitled

cause, and for an order directing such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript of the record herein, as provided for in Section 10 (e) of the National Labor Relations Act (49 Stat. 449; 29 U. S. C. Sec. 160).

In support of such petition, petitioner respectfully shows to the Court as follows:

151 1. Heretofore, on March 2, 1936, this Court entered its order allowing the filing of the Board's petition for the enforcement of an order of the Board, theretofore issued against the respondent herein, directing the respondent to cease and desist from certain unfair labor practices affecting commerce prohibited by the National Labor Relations Act and to take certain affirmative action to effectuate the policies of said Act. More particularly, the Board's order required the respondent to cease and desist from (a) discharging or threatening to discharge any of its employees for the reason that such employees have joined or assisted American Radio Telegraphists' Association, San Francisco Local No. 3, or otherwise engaged in union activity, and (b) from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual air or protection, as guaranteed in Section 7 of said Act. The order further required the respondent to reinstate, with back pay from the dates of their respective discharges, five employees whom the Board found had been discriminatorily discharged by the respondent in violation of Section 8, subdivisions (1) and (3), of said Act, and to post notices to its employees stating that it will not discharge or in any manner dis-

152 criminate against members of, or those desiring to become members of, the American Radio Telegraphists' Association, or persons assisting said Association or otherwise engaged in union activity.

2. Thereafter, on January 11, 1937, this Court, Judge Garrecht dissenting, entered its judgment and decree denying the petition of the Board for the enforcement of its said order. Senior Judge Wilbur was of the opinion that the said order, and the Act, insofar as it purports to confer authority upon the Board to make and issue said order, violate the due process clause of the Fifth Amendment to the Constitution of the United States and that, herefore, the petition of the Board must be denied. Judge Mathews, concurring in the result, was of the opinion that the Board's petition must be denied for the reason that the five men whom the Board ordered the respondent to reinstate to their former positions with back pay were not, at the time they were alleged to have been discriminatorily discharged, "employees" of the respondent within the meaning of the Act, because there is no proof and no finding that they had ceased work "as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice." In view of this

conclusion, Judge Mathews deemed it unnecessary to decide the question of the constitutionality of the Act as applied to this respondent.

3. In view of the decision of this Honorable Court, the
153 Board respectfully submits that additional evidence, including expert testimony, on the questions whether a "current labor dispute" existed at the time of the alleged discriminatory discharges of the five men in question, and whether these said five men ceased work as a consequence thereof, or in connection therewith, and were, therefore, "employees" of the respondent within the meaning of Section 2, subdivisions (3) and (9), of said Act, is material evidence within the meaning of Section 10 (e) of said Act.

4. Said additional evidence was not adduced at the hearing held before the Trial Examiner appointed by the Board to conduct said hearing for the reason that counsel for the Board was of the opinion that the provisions of the Act, and especially Section 2, subdivisions (3) and (9), thereof, were to be understood and treated as a part of the record of the hearing, and for the further reason that such evidence as was adduced at said hearing upon the question of the existence of a "current labor dispute" at the time of the alleged discriminatory discharges of the five men in question was considered by counsel for the Board to be sufficient to fulfill the standards established by Section 2, subdivisions (3) and (9), of the Act.

Wherefore, the Board prays this Honorable Court that it remand this cause to the Board with leave to the Board to adduce additional evidence on the questions set forth in paragraph 3 hereof, and that it direct such additional evidence to be taken before the Board,
154 its member, agent, or agency, and to be made a part of the transcript of the record in this cause, as provided in Section 10 (e) of the Act.

The Board further prays this Honorable Court for an order allowing a rehearing in this cause in the event the Board, pursuant to the provisions of Section 10 (e) of the Act, makes new findings, or modifies its findings as to the facts, or makes recommendations for the modification of its order, by reason or upon the basis of the additional evidence so adduced.

(s) J. WARREN MADDEN, *Chairman*,
(s) EDWIN S. SMITH, *Member*,
(s) DONALD WAKEFIELD SMITH, *Member*,
National Labor Relations Board.

CHARLES FAHY,
General Counsel,
ROBERT B. WATTS,
Associate General Counsel,
ROBERT S. ERDAHL,
Attorney,
National Labor Relations Board.

FEBRUARY 2, 1937.

155 [*Duly sworn to by J. Warren Madden, et al.; jurat omitted in printing.*]

156 CERTIFICATE OF COUNSEL

Comes now Robert B. Watts, attorney for the petitioner, and certifies that he has read and knows the contents of the foregoing petition, and that said petition is well founded and is not filed for the purpose of delay.

(s) ROBERT B. WATTS,
Attorney for Petitioner.

157 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Order submitting petition for leave to adduce additional evidence and for rehearing

April 23, 1937

By direction of the court, the petition of National Labor Relations Board for leave to adduce additional evidence and for rehearing, heretofore filed herein on February 9, 1937, and within time allowed by rule of court for filing of petition for rehearing, is called for hearing on said petition and opposition of Mackay Radio & Telegraph Company thereto, filed February 13, 1937. Mr. Louis W. Myers, counsel for Mackay Radio & Telegraph Company, orally argued in opposition to said petition, Mr. A. N. Somers, Senior Litigation Attorney, National Labor Relations Board, orally argued in support of said petition, and matter ordered submitted to the court for consideration and decision, with leave to counsel for National Labor Relations Board to file a further brief within fourteen (14) days; and with leave to counsel for respondent to reply thereto within fourteen (14) days thereafter.

158 [File endorsement omitted.]

159 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Motion of the National Labor Relations Board for leave to file a supplement to petition for rehearing and for leave to adduce additional evidence

Filed May 10, 1937

To the Honorable Curtis D. Wilbur, Presiding Judge, and to the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes the National Labor Relations Board, petitioner in the above-entitled cause, and, upon the facts alleged in the attached sup-

plement to petition for rehearing and for leave to adduce addi-
160 tional evidence, and moves this Honorable Court for leave to file said supplement to petition.

Dated, San Francisco, May 10, 1937.

CHARLES FAHY,
ROBERT B. WATTS,
PHILIP LEVY,
A. NORMAN SOMERS,
Attorneys for Petitioner.

161 *Supplement to petition*

The National Labor Relations Board (hereinafter referred to as the Board) respectfully supplements its petition to this Honorable Court for rehearing and for leave to adduce additional evidence in the above entitled cause. In support of such petition, in addition to the grounds set forth in the Board's original petition filed February 2, 1937, the Board respectfully shows to the Court as follows:

5. On January 11, 1937, this Court, Judge Garrecht dissenting, entered its judgment and decree denying the petition of the Board for the enforcement of its order. 87 F. (2d) 611. Senior Judge Wilbur delivered the main opinion, holding that the said order, and the Act, in so far as it purports to confer authority upon the Board to make and issue said order, violate the due process clause of the Fifth Amendment and the jury trial provision of the Seventh Amendment. The cases principally relied upon were Adair v. United States, 208 U. S. 161 and Coppage v. Kansas, 236 U. S. 1; the case of Texas & New Orleans R. R. v. Brotherhood, 281 U. S. 548, was declared to be inapposite; and the decision of the Second Circuit in National Labor Relations Board v. The Associated Press, 85 F. (2d) 56, then recently delivered, was not followed. Judge Mathews, concurring in the result, was of the opinion that the Board's petition must be denied
for the reason that the five men whom the Board ordered
162 the respondent to reinstate to their former positions with back pay were not, at the time they were alleged to have been discriminatorily discharged, "employees" of the respondent within the meaning of the Act, because, in the opinion of Judge Mathews, proof was lacking and a finding was absent that they had ceased work "as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice." In view of this conclusion, Judge Mathews deemed it unnecessary to decide the question of the constitutionality of the Act as applied to this respondent. 87 F. (2d) at 631. However, both the main and dissenting opinions disagreed with this view of the findings and the statute, and regarded the Board's order as proper under the terms of the Act. 87 F. (2d) at 628, 629, 633.

6. On April 12, 1937, subsequent to the filing of the Board's original petition herein for leave to adduce additional evidence and for rehearing, the United States Supreme Court upheld the validity of the National Labor Relations Act as applied in five cases ranging from interstate transportation and communication to the manufacturing of clothing. The Court overruled all the constitutional objections to the Act made by respondent in the case at bar, including those under the commerce clause, the Fifth and Seventh Amendments, as well as objections relating to the delegation of legislative or judicial power. The Associated Press v. National Labor Relations Board; Washington, Virginia & Maryland Coach Company
163 v. National Labor Relations Board; National Labor Relations Board v. Jones & Laughlin Steel Corporation; National Labor Relations Board v. Fruehauf Trailer Company; National Labor Relations Board v. Friedman-Harry Marks Clothing Company. Specifically, the Court held in all five cases that the prohibition against discriminatory discharge in Section 8, subdivisions (1) and (3) of the Act is valid and that the Adair and Coppage decisions were inapplicable. National Labor Relations Board v. Jones & Laughlin Steel Corporation, supra. See also Virginian Ry. Co. v. System Federation No. 40, U. S. Sup. Ct., March 29, 1937.

7. The foregoing decisions dispose of the constitutional objections at the basis of the main opinion in the case at bar, and substantially adopt the position taken in the dissenting opinion of Judge Garrecht. And inasmuch as both the main and dissenting opinions herein disagreed with the view of the statute and the record taken in the concurring opinion of Judge Mathews (supra), it follows that the Board's order herein is valid in all respects and should be affirmed and enforced.

8. Under these circumstances, whether or not additional evidence be adduced, this Court has the power, at least in this, the same term of Court, to take judicial notice of the supervening decisions of the Supreme Court; and, pursuant to the petition heretofore filed, or even independently thereof, to grant a rehearing, and to reverse the decree and judgment previously rendered. Unitype Co.
164 v. Long, 149 Fed. 196 (C. C. A. 6th); Burget v. Robinson, 123 Fed. 262 (C. C. A. 1st); Omaha Electric Light Company v. City of Omaha, 216 Fed. 848 (C. C. A. 8th). See also W. T. Irwin v. Missouri Valley Bridge & Iron Co., 275 U. S. 572. Your petitioner respectfully submits that a rehearing in the case at bar should be allowed in the interests of justice and the prompt disposition of this litigation, which affects the administration of a valid Congressional enactment of the greatest public importance. In the event, however, that the Court should be of the opinion that the Board's order is deficient in the respects assigned in the concurring opinion of Judge Mathews, then your petitioner respect-

fully prays that the cause be remanded to the Board for the purpose of adducing such additional evidence and of making such additional findings as may be deemed appropriate on the issue as to whether the employees here involved had ceased work as a consequence of, or in connection with, a current labor dispute. Such is the procedure customarily followed in similar administrative proceedings. Helvering v. Rankin, 295 U. S. 116, 131–133; Federal Trade Commission v. Royal Milling Co., 288 U. S. 212, 218; Fulton Oil Co. v. Commissioner, 81 F. (2d) 330 (C. C. A. 9th); Doernbecher Mfg. Co. v. Commissioner, 80 F. (2d) 573 (C. C. A. 9th); James S. Kirk & Co. v. Federal Trade Commission, 59 F. (2d) 179 (C. C. A. 7th); Ohio Leather Co. v. Federal Trade Commission, 45 F. (2d) 39 (C. C. A. 6th); Proctor & Gamble Co. v. Federal Trade Commission,
165 11 F. (2d) 47, certiorari denied, 273 U. S. 717; See also Agwilines, Inc. v. National Labor Relations Board, 87 F. (2d) 146 (C. C. A. 5th).

Wherefore your petitioner prays this Honorable Court that a rehearing be granted in this proceeding in the light of the decisions of the Supreme Court heretofore rendered on April 12, 1937, and that upon said rehearing, the petition of the National Labor Relations Board for the enforcement of its order be granted, or, in the alternative, that the cause be remanded to the Board for the purposes of adducing additional evidence and making additional findings, all as heretofore stated in the original and in this supplemental petition. Your petitioner also prays for such other further and additional relief as may in the premises be proper.

Dated, San Francisco, May 10, 1937.

Respectfully submitted.

CHARLES FAHY,
ROBERT B. WATTS,
PHILIP LEVY,
A. NORMAN SOMERS,
Attorneys for Petitioner.

166 CERTIFICATE OF COUNSEL

Comes now A. Norman Somers, attorney for the petitioner, and certifies that he has read and knows the contents of the foregoing supplement to petition, and that said supplement to petition is well founded and is not filed for the purpose of delay.

Dated, San Francisco, May 10, 1937.

A. NORMAN SOMERS,
Attorney for Petitioner.

167 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Order granting petition for rehearing

May 17, 1937

Upon consideration of the petition of National Labor Relations Board, filed February 9, 1937, for leave to adduce additional evidence and for rehearing, and memorandum in opposition thereto, filed February 13, 1937, and motion of petitioner for leave to file supplement to petition for rehearing, supplement to petition and brief in support of petition, filed May 10, 1937, and of oral arguments had thereon, and by direction of the court,

It is ordered that petition for rehearing be, and hereby is granted.

168 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Order resubmitting cause, etc.

June 14, 1937

Ordered cause on rehearing, and motion of petitioner to adduce additional evidence, argued by Mr. A. N. Somers, Senior Ligitation Attorney, National Labor Relations Board, and by Mr. Bertram Edises, Attorney, National Labor Relations Board, counsel for respondent, and submitted to the court for consideration and decision.

Upon request of Mr. Myers, ordered exception noted to order, entered herein on May 17, 1937, granting petition for rehearing.

169 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Order directing filing of opinions and filing and recording of judgment

October 19, 1937

By direction of the court; ordered that the opinions of Wilbur and Mathews, Circuit Judges, and dissenting opinion of Garrecht, Circuit Judge, be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the majority opinions rendered.

170 In United States Circuit Court of Appeals for the Ninth Circuit

No. 8137. Oct. 19, 1937

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

MACKAY RADIO & TELEGRAPH COMPANY, RESPONDENT

Upon Petition to Enforce an Order of the National Labor Relations Board

Upon Rehearing

Before: WILBUR, GARRECHT, and MATHEWS, Circuit Judges

Opinions on rehearing

Filed Oct. 19, 1937

WILBUR, Circuit Judge: My associates in this case adhere to the views they expressed and the conclusions they reached on the first hearing. These opinions are reported in 87 F. (2d) 631 and 632.

The opinion of the Supreme Court in National Labor Relations Board v. Jones & Laughlin S. Corp., 57 S. Ct. 615, and companion cases, sustain the constitutionality of the Act in most of the aspects under attack in this case, and conformity with those decisions requires that I review the case from the standpoint of the validity of of the Wagner Act. I refer to the opinions heretofore written for a statement of the facts.

Suffice it to say that the five persons ordered reemployed with back pay were on a strike; that of sixty-nine members of the union who struck sixty-four were reemployed. The remaining five places had been filled by other employees of the respondent who had been transferred from Los Angeles and New York. The reason given for failure to reemploy the five persons whom the Board ordered restored to employment was that all vacancies were filled. Respondent con-

171 tended that these persons were not reemployed because they delayed their applications for reemployment until after their places had been filled; that four of them were placed upon a list of eleven whose reinstatement was to be passed upon by the officers of the respondent in New York, and that the reason they, rather than the other seven were not reemployed, was because of their delay in applying. The Board, however, was of the opinion and so found, that the respondent so manipulated the list of eleven who were required to apply for reinstatement and so fixed the time for such application that these individuals were thus deprived of the privilege of reinstatement accorded the other members of the union. The con-

clusion of the Board is stated in the following portion of their findings:

"The inference seems clear that the respondent's officials readily perceived that circumstances had provided them with an excellent opportunity to rid the respondent of the leaders of the Local which had just caused it to pass through a costly strike and it did not fail to make the most of the opportunity. And in thus taking advantage of that opportunity the respondent committed a violation of the Act. * * *

"We conclude that the four operators in question were placed on the list (of eleven) because of their union leadership and activity and therefore turn to the effect of that list upon the actions of the men named thereon. * * *

"These four were induced to postpone their applications because of the reasonable belief that they would not be permitted to return to work and that belief was planted in their minds by conduct of the respondent directed against them because of their union activities."

As to the respondent's refusal to reemploy P. D. Phelps, the fifth employee, the Board likewise refused to accept the explanation that Phelps was not reinstated because at the time he made application his position had already been filled and concluded that the refusal of the respondent was a violation of Section 8, subdivisions (1) and (3) of the Act.

In its " Concluding findings of fact and conclusions of law", the Board states:

"2. By refusing to reinstate to employment A. B. Loudermilk, L. K. Bash and P. D. Phelps on October 8, 1935 and L. N. 172
Rone and G. E. Palmer on October 9, 1935, thereby discharging said employees on the respective days, and by each of said discharges, the respondent did discriminate in regard to tenure of employment and has thereby discouraged membership in the labor organization known as American Radio Telegraphists' Association, San Francisco Local No. 3.

"3. By the acts described in paragraph 2 above, and each of them, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act."

The Board further finds that the respondent has engaged in an unfair labor practice affecting commerce within the meaning of sec. 8, sub. 3, and sec. 2, subs. 6 and 7 of the National Labor Relations Act.

In view of the decision of the Supreme Court in National Labor Relations Board v. Jones & Laughlin S. Corp., supra, and companion cases, holding that the Wagner Act is not in conflict with the Constitution, only two points remain to be considered. The first point is whether or not the order of the Board requiring the reemployment of the five former employees "is so arbitrary, capricious, unjust and unreasonable that it should be annulled for this reason

alone." This question concerns the power of the court "to modify or set aside in whole or in part the order of the Board" (Sec. 10, sub. (e)). The second question goes to the statutory power of the Board to order the reemployment of the five former employees. This proposition is thus stated by the respondent:

"Even if the Act were constitutionally valid, the order of the Board requiring respondent to reemploy the five former employees, and to pay them wages for the period when they were not employees and rendered no services, was clearly beyond the power of the Board."

In view of the conclusion I have arrived at concerning this second proposition it is unnecessary to consider the first or to exercise the discretionary power of the court in its enforcement order. (Compare, Federal Trade Comm. v. Curtis Pub. Co., 260 U. S. 568, 580; Internat'l Shoe Co. v. Fed. Trade Comm., 280 U. S. 291.)

173 The question of the statutory power of the Board I will now consider:

The respondent's argument on that question is as follows:

"The Board's decision is predicated throughout upon the assumption that these men were wrongfully 'discharged' by respondent. The Board purports to 'find' as a fact that they were so 'discharged' on October 8th and 9th, respectively. This purported 'finding' is purely a conclusion of law and is clearly erroneous. It is predicated solely upon the definition in Section 2 (3) defining the word 'employee' to 'include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute * * *.' It is conceded that Congress in enacting a statute may attach to a word used therein any definition it sees fit, and such definition must be accepted as conclusive for the purpose of interpreting that statute. It is equally clear that such a statutory definition has no effect whatsoever, except as an aid to the interpretation of that particular statute. Obviously, the Congress has no power, by mere legislative fiat, to create a fact or to change a fact.

"The obvious purpose of this definition in the statute was to provide that employees, while out on strike, shall be regarded as if they still were employees in fact, for the purposes of collective bargaining. Without such a provision in the Act, its collective bargaining provisions would fail utterly in the event of a strike. There is no good reason to suppose that Congress, by creating this definition, solely for the purposes of this statute, intended or attempted thereby to create the relationship of employer and employee where no such relationship exists in fact. Clearly, this would be beyond its power, and it is not to be supposed that Congress was attempting something so obviously futile.

"The relationship of employer and employee is a status which rests in contract, and can be created only by a contract, expressed or implied. Under our American Constitution, no legislative body has power to create a contract between two parties without the assent of both. When an employee quits his job and walks out and re-

fuses to return to work, the result is either that he breaches his contract of employment or that he terminates it. If it is a term
174 contract and the term has not expired, he breaches it—and the employer, at his option, may elect to treat such breach as a termination thereof.

"If it is a contract at will, it is terminated by the mere act of the employee in quiting. In either case, the contract of employment has been terminated and the status of employer and employee no longer exists.

"The facts of this case, as found by the Board, show conclusively that the employment contracts of these five men were terminated on October 4th and 5th, respectively, by the voluntary action of the men in quitting their jobs. In fact, none of these men has been an employee of respondent at any time subsequent to October 5th. Therefore, the conclusion, that these men were 'discharged', is not merely contrary to the evidence; it is contrary to the facts as found by the Board itself.

"It follows that the order herein is beyond the power of the Board under the Act, even assuming the Act to be constitutionally valid. It requires respondent to offer 'full reinstatement' to each of these men and to pay to each the full amount of wages, during the period from October 9, 1935, to the date of such offer of 'reinstatement', which he would have earned if he had been employed by and rendering full service to respondent throughout that period. (This amount to be reduced in each case, by the amount the man had earned in other employments, during the relatively brief period between October 9, 1935, and December 2, 1935, the date of hearing.) Under the Board's order there can be no reduction on account of the earnings of these men during the period subsequent to December 2, 1935, however large those earnings may have been.

"The Board evidently predicated its action in this behalf upon a misinterpretation of that portion of Section 10 (c) which purports to authorize the Board by its order to require the employer to 'take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.' It is submitted that this provision for 'reinstatement' of employees with or without back pay must be construed as applying only to such employees as have been wrongfully discharged. So
175 construed, it would be entirely reasonable (assuming the Act be otherwise valid). An employee who has been wrongfully discharged has the right to treat his contract of employment as still subsisting and to recover his wages thereunder, less what he may have earned in the meantime. This is a legal right and may be enforced by an action at law."

In dealing with this question on the previous hearing, I said:

"The case might be disposed of on the theory advanced by the respondent that the individuals who were ordered restored to their positions by the Board had themselves, by their voluntary act, ceased to be employees; consequently, that the act does not apply because the

act authorized the reinstatement of employees and does not regulate the re-employment or the employment of laborers. Thus interpreted, the act applies only to a situation where the employer has discharged an employee against the will of the employee and his reinstatement is directed in consequence. But to base our conclusion upon that theory in the case at bar would require us to ignore the declarations in the act itself that employees on a strike are to be considered still as employees within the meaning of the act which declares the term 'employee' as used in the act to include 'any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.' Section 2, subdivision 3 of the act (29 U. S. C. A. Sec. 152 (3)). Consequently, the Board was acting well within the power Congress sought to vest in it, and our decision must be based upon the broad ground that the act, according to its plain terms, is unconstitutional as violative of the Fifth Amendment in so far as it attempts to force upon an employer engaged in interstate commerce a contract of employment with those so engaged who have voluntarily terminated contract of employment.

"The order requiring the employment of the five individuals named is beyond the power of the Board and cannot be enforced."

176 In none of the decisions of the Supreme Court involving the power of Congress to order a reinstatement of employees has the court gone so far as to sustain an order requiring the reemployment of persons who had terminated their employment by striking. (Texas & N. O. Ry. v. Brotherhood, 281 U. S. 548; N. L. R. B. v. Jones & Laughlin S. Corp., and companion cases, supra) In the latter case Chief Justice Hughes, speaking for the court, said:

"The act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' The act expressly provides in section 9 (a) that any individual employee or a group of employees shall have the right at any time to prevent grievances to their employer. The theory of the act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the act in itself does not attempt to compel. As we said in Texas & N. O. R. Co. v. Railway & S. S. Clerks, supra, and repeated in Virginia Railway Co. v. System Federation No. 40, the cases of Adair v. United States, 208 U. S. 161, 28 S. Ct. 277, 52 L. ed. 436, 13 Ann. Cas. 764, and Coppage v. Kansas, 236 U. S. 1, 35 S. Ct. 240, 59 L. ed. 441, L. R. A. 1915 C, 960, are inapplicable to legislation of this character. The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their selforganization and representation, and, on the

other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. The true purpose is the subject of investigation with full opportunity to show the facts. It would seem that when employers freely recognize the right of their employees to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge. * * *

177 "The requirement of restoration to service of employees discharged in violation of the provisions of that act [Railway Labor Act] was thus a sanction imposed in the enforcement of a judicial decree. We do not doubt that Congress could impose a like sanction for the enforcement of its valid regulation. The fact that in the one case it was a judicial sanction, and in the other a legislative one, is not an essential difference in determining its propriety."

On the previous hearing I put my decision flatly upon the constitutional question, namely, the want of power in Congress to compel an employer to make a contract of employment. In so doing I assumed, contrary to the contention of the respondent, that the definition of the word "employee" contained in the Wagner Act applied to an employee on strike, as it clearly does, and said that the evident intent of Congress is to permit an order of reinstatement of such employees with back pay. Since our former decision in this case the Circuit Court of Appeals for the fourth circuit in The Jeffery-DeWitt Insulator Co. v. N. L. R. B., decided June 16, 1937, has so held. As pointed out by Chief Justice Hughes, supra, speaking for the Supreme Court, in N. L. R. B. v. Jones & Laughlin Steel Corp., the act does not require the employer to enter into a contract. If it did it would be subject, no doubt, to the constitutional objections declared in the earlier cases to which he refers as not applicable (Adair v. U. S., supra, and Coppage v. Kansas, supra), which hold in effect that Congress cannot define the terms of a contract between employer and employee, nor require them to enter into a contract. The word "reinstatement" used in Sec. 10 (c) of the Wagner Act must be construed in the light of this constitutional limitation upon the powers of Congress which would permit "reinstatement" of employees wrongfully discharged (N. L. R. B. v. Jones & Laughlin S. Corp., supra) but would, in my opinion, forbid a requirement of "reemployment," that is, a new contract of employment. Moreover, as pointed out by the respondent the ordinary meaning of the word "reinstate" is "to place again in possession, or in a former state: to restore to a state from which one has been removed, to instate again." (Webster's International Dictionary.) The order of "reinstatement" must therefore refer to the status of the "employee" at the time

178 of the unfair labor practice which, in the case at bar, occurred after the strike. To reinstate such an employee to his status at the time the respondent was guilty of the unfair labor practice would be to require the respondent to recognize his right to collective

bargaining. It is not contended that this right was denied them. I conclude that under the statute (Sec. 10 c) properly construed in the light of the constitution, the power of the Board to order "reinstatement" of an employee does not authorize an order requiring the employer to reemploy at his former salary or wage, or otherwise, a striking employee who was on a strike and who had thus voluntarily terminated his right to salary or wages at the time the alleged unfair labor practice was committed by the respondent.

I therefore concur in the conclusion of Judge Mathews that the application be denied.

Opinion

MATHEWS, Circuit Judge: I adhere to the views expressed in my separate opinion filed January 11, 1937, 87 F. (2d) 631.

Dissenting opinion

GARRECHT, Circuit Judge, dissenting:

In view of the opinion of the Supreme Court in National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 S. Ct. 615, I feel that this court should grant the petition of the Board in this case and I dissent from any other holding.

To what was said by me in the first hearing (see 87 F. (2d) 611, 632–641), the following pertinent considerations may be added.

The order of the Board requiring reinstatement of the five striking employees of the respondent and payment to them of wages for the period subsequent to the failure to reinstate them was fully justified under the Act.

If the employees ceased work on October 4, 1935, "as a consequence of, or in connection with, any current labor dispute" they retained their status as employees of respondent during the strike. Section 2 (3) of the Act is as follows:

"The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individ-
179 ual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

The evidence and findings are clear to the effect that a labor dispute culminating in a strike occurred as a climax to protracted and unsatisfactory negotiations.

Following are excerpts from the findings of fact made by the Board:

"In September 1934 the San Francisco Local sent one of its members, Loudermilk, to New York for about a month to aid in the

ARTA organization of the Mackay operators in that city in an attempt to prevent undermining of the San Francisco wage scale by payment of a lower scale in New York. In February 1935 an administrative Committee of the Local was appointed for the purpose of contacting all of the operators in the Mackay system, ARTA members and non-members, to ascertain their views on wages and working conditions. A lengthy questionnaire which covered these matters in detail was sent to the Mackay operators. After the receipt and compilation of this material, members of the Local prepared a general agreement concerning wages and working conditions for the entire Mackay point to point system. This agreement was sent to all of the ARTA locals and ratified by them. It was then presented by the national officers of ARTA to the Mackay officials in New York in June 1935. They requested and were given more time in which to consider the agreement in view of contemplated bankruptcy proceedings that might affect the Mackay companies. The agreement was again presented in September 1935. The national officers of ARTA had requested that the Local send O. M. Salisbury to New York to assist them in the negotiations since they were not too familiar with point to point conditions. Salisbury, who was chairman of the point to point division of the Local and an operator employed in the HB office, went East for this purpose. He was given a leave of absence, the reason for the trip being clearly understood by the respondent. At the same time, at a meeting
180 of the Local held prior to September 1935, the members voted in favor of a strike if such action became necessary to support their demands.

"The marine operators had also presented the Mackay companies with a system agreement. On September 13, Salisbury wired Bash, who was chairman in his place, that while the Radio Corporation of America had signed such a marine agreement, Mackay had refused and was recommending non-ARTA marine operators to the steamship companies. He suggested a special meeting to consider joint action on the two agreements. Rathborne, Secretary of the Local, Bash and Russ, who was marine superintendent of the respondent, conferred that morning on the question of recommending non-ARTA operators but reached no agreement. Stone, the new vice-president in charge of operations for the respondent, happened to be in San Francisco that day. In the afternoon a number of marine operators and ARTA members of the point to point Mackay group of the Local conferred with Stone. The marine agreement was discussed to some extent, Stone pointing out defects in the agreement RCA had signed. The point to point ARTA operators stated that they were considering joint action on the two agreements. Stone replied that he was taken by surprise and requested time to return to New York to study the point to point agreement. The request was granted. That evening a joint meeting of the marine and point to point members was held and a resolution adopted to the effect that the two divisions should unite for joint action on the two agreements, so that one

could not be adopted to the exclusion of the other, and that the Mackay officials should have until September 23 to execute the agreements unless the ARTA officers negotiating such agreements believed negotiations were proceeding in a satisfactory manner. The vote was overwhelmingly in favor of the resolution, only three or four voting against it. In view of the strike vote taken at the meeting prior to September 1, the action taken at the September 13 meeting was really the fixing of a deadline at which the ARTA officers could call a strike if they deemed one necessary. At this time nearly all of the HB operators were members of the Local. As the ARTA admitted supervisory officials to membership, some of the supervisors in that office were also members.

181 "B. The October 7–8 Strike

"On October 4 the ARTA negotiators in New York decided that a strike was advisable in view of the unsatisfactory state of the negotiations. Salisbury telephoned the Local and a meeting of the point to point group was held that evening. The strike had been set for 12 o'clock midnight, San Francisco time, and was to be nation-wide over the Mackay system. A strike committee for San Francisco was appointed at the meeting. At midnight all of the HB office force then on duty went on strike, with the exception of the official in charge."

These findings being supported by evidence are conclusive. The Act (Sec. 10 (e)) provides "The findings of the Board as to the facts, if supported by evidence, shall be conclusive." See National Labor Relations Board v. National New York Packing & Shipping Co., 86 F. (2d) 98.

In his first opinion Judge Wilbur conceded this contention of the Board and pointed out that the position of Judge Mathews was untenable, in this language:

"The case might be disposed of on the theory advanced by the respondent that the individuals who were ordered restored to their positions by the Board had themselves, by their voluntary act, ceased to be employees; consequently, that the act does not apply because the act authorized the reinstatement of employees and does not regulate the re-employment or the employment of laborers. Thus interpreted, the act applies only to a situation where the employer has discharged an employee against the will of the employee and his reinstatement is directed in consequence. But to base our conclusion upon that theory in the case at bar would require us to ignore the declarations in the act itself that employees on a strike are to be considered still as employees within the meaning of the act which declares the term 'employee' as used in the act to include 'any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.' Section 2, subdivision 3 of the act (29 U. S. C. A., Sec. 152 (3)). Consequently, the Board was acting

182 well within the power Congress sought to vest in it, and our decision must be based upon the broad ground that the act, according to its plain terms, is unconstitutional as violative of the Fifth Amendment in so far as it attempts to force upon an employer engaged in interstate commerce a contract of employment with those so engaged who have voluntarily terminated contract of employment."

In his present opinion Judge Wilbur has receded from his former stand and now accepts the argument as set forth in respondent's brief.

In his opinion on the petition for rehearing, Judge Wilbur asserts that under the Jones & Laughlin decision, employers cannot be required to enter into a contract with their employees or any of them; that only when an employee has ceased work by reason of an unfair labor practice can reinstatement be required without forcing a new contract; that when, as in the instant case, work ceased before the unfair practice took place, to require reinstatement of the employee to the position he held directly before work ceased is to force the employer to make a new contract, hence beyond the legitimate scope of the Act.

This view appears to me to be a strained construction designed to nullify the National Labor Relations Act in an important field of its operations. If Section 10 (c) empowering the Board "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act," operates only in those cases where unfair labor practices occur without or before a strike, then, obviously, an employer at the conclusion of a strike may by an unfettered selection of men discriminate against those who are most active in union affairs.

The reasoning which dictates this stultifying conclusion leaves me cold. Because employment is a matter of contract, it is said, to compel the hiring of a man who has ceased work for reasons other than an unfair labor practice is to compel the making of a new contract.

The argument overlooks the fact that the relationship of employer and employee, while initiated by contract, is a status the incidents of which may be altered by the legislature under its police power. In the field of interstate commerce it is the Congress which exercises this police power.

183 Examples of relationships originating in contract whose incidents are subject to legislative alteration are numerous.

The status of seaman and vessel, resting in and originated by contract, may be modified by Congress to the extent (to cite one example among many) of prohibiting the payment of wages in advance. Patterson v. The Eudora, 190 U. S. 169, 175. The status initiated by the contract of employer and employee in an industry subject to state regulation may be altered by abolishing the employee's right to sue for injuries and substituting therefor a system of workmen's compensation. New York Central v. White, 243 U. S. 188, 206; Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, 571. Likewise, in an inter-

state commerce industry, Congress may alter the status of the employment relationship by abrogating certain of the common law defenses of an employer against suit for damages brought by an employee. Mondou v. N. Y., etc., R. Co., 223 U. S. 1.

By the passage of the National Labor Relations Act in July 1935, several months before the activities pertinent to this decision occurred, Congress undertook to add certain incidents to the status originating in the contract of employment in industries subject to its control of which the Radio and Telegraph industry is an outstanding example. One of these added incidents is the continuance of the employer-employee status during the cessation of work caused by a labor dispute (Section 2 (3) of the Act, supra). Another arises from Section 10 (c), as follows:

"* * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. * * *"

When we consider the purpose of the Act this must be construed to mean that if work ceases in consequence of a labor dispute
184 and the employer, upon the resumption of work, selects the men to reman his plant with a view to discriminate against or hamper labor union activity, he may be required to reinstate those discriminated against to the positions held by them at the time work ceased.

This is the construction of the Act which most tends to effectuate its policies. The Act, so construed, is clearly constitutional unless it can be said, beyond a reasonable doubt, that the addition of such an incident to the employment status cannot conceivably promote the welfare of interstate commerce. Ogden v. Saunders, 12 Wheat. 213, 269; Sinking Fund Cases, 99 U. S. 700, 718; Lindsley v. National Carbonic Gas Co., 220 U. S. 61, 78; Williams v. Mayor, 289 U. S. 36, 42; U. S. v. Butler, 297 U. S. 1, 67.

The promotion of collective bargaining in industries subject to the power of Congress has been determined to be within the field of Congressional action. Certainly it cannot be deemed a "fanciful conjecture" (Borden's Co. v. Baldwin, 293 U. S. 194, 209) that the prevention of discrimination by requiring the employer to reinstate an employee to the position held before a strike which gave the employer the opportunity to practice discrimination will operate to promote and strengthen collective bargaining.

Therefore I am of the opinion that the Board's order was proper. It obviously follows that the order for payment of wages from the date of the unfair practice was also within the Board's jurisdiction.

[File endorsement omitted.]

185 In United States Circuit Court of Appeals for the Ninth Circuit

No. 8137

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

MACKAY RADIO AND TELEGRAPH COMPANY, RESPONDENT

Judgment

Filed Oct. 19, 1937

Upon petition to enforce an order of the National Labor Relations Board.

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this court that the said petition to enforce the Order of the National Labor Relations Board in this cause be, and hereby is, denied.

[File endorsement omitted.]

186 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Order staying issuance of order denying petition for enforcement

Filed Nov. 11, 1937

Upon application of Charles Fahy, Esq., General Counsel for petitioner, and good cause therefor appearing, it is ordered that the issuance, under Rule 32, of the order of this Court denying the Petition for Enforcement in the above cause be and is hereby stayed to and including December 19, 1937; and in the event the petition for a writ of certiorari to be made by petitioner herein be docketed in the Clerk's Office of the Supreme Court of the United States on or before said date, then the said order of this Court is to be stayed until after the Supreme Court of the United States passes upon said petition.

CURTIS D. WILBUR,
Judge,
United States Circuit Court of Appeals for the Ninth Circuit.

Dated at San Francisco, California, this 11th day of November 1937.

[File endorsement omitted.]

187 [Clerk's certificate to transcript of record omitted in printing.]

1 Before National Labor Relations Board, Twentieth Region

Case No. XX–C–2

IN THE MATTER OF MACKAY RADIO AND TELEGRAPH COMPANY, A CORPORATION, AND AMERICAN RADIO TELEGRAPHERS' ASSOCIATION, SAN FRANCISCO LOCAL NO. 3

Statement of evidence

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Monday December 2, 1935.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

Before HENRY EICKHOFF, JR., Trial Examiner

Appearances

Bertram Edises, Regional Attorney, on behalf of the National Labor Relations Board. U. H. Merrick, 67 Broad Street, New York, N. Y., and Lawrence Livingston, Russ Building, San Francisco, California, on behalf of Mackay Radio and Telegraph Company.

2 *Colloquy*

Trial Examiner EICKHOFF. This is a hearing in the Matter of the Mackay Radio and Telegraph Company, a corporation, and American Radio Telegraphists' Association, San Francisco Local No. 3.

Are the parties ready to proceed?

Mr. EDISES. Ready.

Mr. MERRICK. Before any proceedings are taken in this case I would like, first, to have it noted as a matter of record that Mackay Radio and Telegraph Company, appearing in this proceeding specially——

Trial Examiner EICKHOFF. (Interrupting.) May I interrupt you for a moment and ask the reporter to first note all of the appearances?

Mr. MERRICK. All right, only as to our appearance I want to have it noted it is not general, but special, without assenting to jurisdiction, or in any way waiving any of our rights to object to these proceedings.

Trial Examiner EICKHOFF. Yes, but I would like the record to show the appearances.

Mr. MERRICK. The reporter already has signed slips showing our appearances.

Trial Examiner EICKHOFF. I will ask the reporter to incorporate, as a part of the record, the order of the Labor Board designating myself as Trial Examiner in this proceeding.

3 (Said order is in the words and figures following, to-wit:

"United States of America

"National Labor Relations Board

"I, Benedict Wolf, Secretary of the National Labor Relations Board and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

"Order Designating Trial Examiner, in the Matter of Mackay Radio & Telegraph Company, a corporation, and American Radio Telegraphists' Association, San Francisco Local No. 3, Case No. XX-C-2.

"In witness whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 29rd day of November A. D. 1935, at Washington, D. C.

[SEAL] "BENEDICT WOLF, *Secretary.*

* * * * * * *

"United States of America

"Before the National Labor Relations Board

"At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 27th day of November, 1935.

4 "Present: J. Warren Madden, Chairman. John M. Carmody.

"Case No. XX-C-2

"IN THE MATTER OF MACKAY RADIO & TELEGRAPH COMPANY, A CORPORATION, AND AMERICAN RADIO TELEGRAPHISTS' ASSOCIATION, SAN FRANCISCO LOCAL NO. 3

"ORDER DESIGNATING TRIAL EXAMINER

"A charge having been filed in this matter, and it having appeared to the Regional Director of the 20th Region, that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

"It is hereby ordered that Henry Eickhoff, Jr., act as Trial Examiner in the above case and perform all the duties and exercise

all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

"By direction of the Board:

[SEAL] "BENEDICT WOLF, *Secretary.*").

Trial Examiner EICKHOFF. Does that complete your statement?

I am sorry, but I did not get your name.

Mr. MERRICK. It is Merrick, sir.

Motion to dismiss

No. I would like at this point to make a motion to dismiss the entire proceeding on the ground that it is brought under an unconstitutional Act of Congress and that there is no authority for it.

The basis of this statement is that the National Labor Act, in the first place, is beyond the power of Congress to enact in that it is an attempt to use the power to regulate interstate commerce for purposes other than the regulation of interstate commerce.

I am not going, at this time, to make any prolonged argument, but I thought I would briefly outline the basis for this contention.

It is unnecessary to state that the power of Congress to legislate depends upon the constitution. The Federal Government is one of the delegated powers; all the residuary powers remaining in the states.

The only authority that anyone has contended exists in the constitution for the passage of the Wagner-Connery Act, which created the National Labor Board, is the power to regulate interstate commerce.

An examination of this Act, particularly the long recital entitled "Finding and Policy," under Section 1, makes it very apparent that Congress is not attempting here to regulate incidents of interstate commerce, but is attempting to use that power for the purpose of regulating matters which are purely intrastate in nature.

There is no attempt in the Act to distinguish between employers that are engaged in interstate commerce and employers that are not engaged in interstate commerce.

The Congress has attempted to confuse the distinctions that have been drawn by the Supreme Court between matters that directly affect interstate commerce and those which indirectly affect interstate commerce.

Under the decision of the Supreme Court, Congressional or Federal power, to regulate interstate commerce extends only to those things which directly affect that commerce, and can not include those which indirectly or remotely affect interstate commerce.

Now, the employer-employee relation fundamentally is not one that directly affects interstate commerce. There may be certain incidents of it. In fact, there are, as the Supreme Court has found

in the past, which do so affect interstate commerce, and as to those the Congress has the power to enact legislation. But the detail provided in this Act, for the regulation of this relationship, goes way beyond those incidents of the relationship which are closely related to interstate commerce.

7 So, the Act as a whole should be considered invalid because it has not attempted, that is, Congress has not attempted to legislate only as to those matters which it has the power to legislae, but has gone way beyond it and has so bound up the two that it is impossible to say that Congress could have constitutionality enacted legislation of the nature that is contained in this part of the Act; in interpreting the Act the administrative board or court, should limit the Act to those particular fields.

The Congress has chosen to deal with them as a whole, and its declaration of policy shows that the separation can not be drawn between those matters which are directly related to interstate commerce and those which are only remotely and indirectly related to give the Federal Government any power to legislate.

So, therefore, the whole Act itself should be considered unconstitutional, and, consequently, there is no power vested in anyone to take proceedings under it.

But even if the Act were valid as to part of the contents, there is no basis for distinguishing which parts should be used in attempting to enforce it in part; so that the Act as a whole, being beyond the power of the congressional authorities, the proceeding should be dismissed on that ground alone.

8 The second reason for the statement that it is unconstitutional is that it deprives persons of their property without due process of law and in violation of the fifth amendment to the constitution. This statement applies not only to the employer, but to the employee. Both of them are deprived of property rights if this Act is valid.

The fifth amendment provides in substance that no person shall be deprived of life, liberty, or property, without due process of law.

The courts have found in many cases that a contract and the right to contract is a property right. There is no question that the fundamental purpose of this Act is to limit freedom of contract. It limits the employer and it limits the employee.

It is provided that representatives of a majority of the employees shall have the right to bind the minorities, and it needs no argument to show that certainly, as far as minority groups of employees are concerned, they are completely denied the right to bargain with their employer. And, on the other hand, the employer has lost the right to deal with minorities of his employees. Apart from that, even in dealing with majorities, his right of bargaining has been severely restricted.

The Act also is unequal in that it attempts to make the findings of the Board, and the orders of the Board, binding upon the employer,

but not upon the employee. Procedure is provided for enforcing the action of the Board as against the employer, but it is provided that nothing in the Act shall limit the right to strike. Quite obvi-
9 ously, if the employees are free to strike at any time, irrespective of an order of the board, there is no power of the board to enforce its order as against the employee.

This inequality in the Act is sufficient in and of itself to give the courts ample justification for refusing to enforce it, in that its application is unequal and unfair.

So, just repeating briefly the basis of this motion, it is that the Act itself is unconstitutional for the reason that it is an attempt to exercise power to regulate interstate commerce in areas beyond the reach of Congress; and that it limits the power of both employer and employee to contract freely, and, in that respect, deprives them both of property without due process of law, in violation of the fifth amendment.

Trial Examiner EICKHOFF. Mr. Merrick, do you contend I have the power to rule on your motion?

Mr. MERRICK. I really have no contention to make in that respect. The sole purpose in making the motion is to save our rights. The Act provides that no objection can be made in the Circuit Court of Appeals that has not been made before the Examiner. I have noticed that in at least one other proceeding that has been brought under this Act, a similar motion has been made. Whether the Trial Examiner merely took it under advisement or made a ruling on the motion at the time, I do not know.

10 Trial Examiner EICKHOFF. Have you any statement to make, Mr. Edises?

Mr. EDISES. I wanted to say, in the first place, that I believe it is within the power of the Trial Examiner to rule on such a motion. As a matter of fact, I believe that he is required to do so under the rules and regulations which have been prepared and issued pursuant to the Act.

Mr. Merrick's objections to the constitutionality of the National Labor Relations Act apparently come under two heads:

First, that congress is using the delegated power to regulate interstate commerce in order to achieve the end of regulating labor relations.

Second, that the employee loses the right to deal with the employer, and, hence, there is a violation of due process; more particularly, that there is a violation of his liberty of contract which has been constituted into the requirements of due process.

Third, apparently, that there results from the Act an inequality of treatment as to employers and employees—the employers being bound and the employees not.

Dealing now with the first point: It is a mistake to assume that the power of Congress to regulate and deal with interstate commerce is confined exclusively to regulations and legislation concerned

11 with the movement of goods and commodities in interstate commerce and transportation of persons in interstate commerce, and so on.

Actually, by a considerable number of decisions, it is well established that congress has the power to remove obstructions to the free flow of commerce. It is not a question of lack of power. It is a question of fact, in a sense, and each particular bit of legislation must be appraised in accordance with the factual situation that it attempts to regulate.

Mr. Merrick's statement that the field of labor relations is one that congress is not entitled to deal with under its power to regulate interstate commerce and to remove obstructions to the free flow of interstate commerce, is, I believe, based upon the language which appeared in the well known case of Adair vs. the United States, which was decided, I believe, in 1907 or 1908.

It is true that a dictum appeared in that case to the effect that the relations of employer and employee apparently did not have anything to do with the question of interstate commerce; but that case emphasized the fact that what was there decided had reference to the particular circumstances there involved. That case was decided in 1907. It dealt not primarily with the question of interstate commerce, but actually went on to the due process point. All that it held was that in 1907 there was apparently no direct con-

12 nection between the regulation of interstate commerce. That was under one of the Acts regulating transportation by rail. That apparently in 1907 there was no such direct relation between the regulation of employment relations and the carrying on of interstate commerce as to justify congress in attempting to regulate that particular relation.

A great deal of water has flown under the bridge since 1907. The factual situation has changed. None of these Acts, no legislation at all of a general nature, can now be considered without paying particular attention to the economic conditions out of which it arises.

The question of due process, in particular, is not a fixed and unchangeable thing. It is something that develops and changes as economic and social conditions themselves develop and change. As a matter of fact, the great Sanhedrin—as I believe Mr. Livingston put it—of business itself has ruled on the constitutionality of the National Labor Relations Act, has admitted that. To quote its language:

"So, with our contentions of due process, they are not fixed and rigid, frozen in place once and for all by the language of our political charter. On the contrary, they yield to our experience and to our settled desires once we have finally determined what we want."

13 Consequently, I ask the court to take judicial notice of the fact that 1935 is not 1907; and that the claim that congress can not now, by the exercise of its power to regulate interstate commerce, deal with questions of labor relations, is no longer applicable.

I want to quote one or two passages from Supreme Court cases which will indicate just what the scope of congress' power to regulate interstate commerce includes.

Quoting from the case of United States vs. Ferger, 250 U. S. 199—This case involved the validity of an Act which provided for punishment of the forgery and issuance of bills of lading for fictitious shipments in interstate commerce. It was contended that there was and could be no commerce in a fraudulent and fictitious bill of lading, that therefore the power of congress could not embrace such a pretended bill of lading.

In upholding the Act, the court, through Mr. Chief Justice White, said:

"But this mistakenly assumes that the power of congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition was sustained it would destroy the power of congress to regulate, as obviously that power, if it is to exist, must include the authority to deal
14 with obstructions to interstate commerce (In re Debs, 158 U. S. 564) and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of congress to regulate, although they are not interstate commerce in and of themselves."

In Section 1 of the Act, entitled "Findings and Policy," there is the following language:

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry, and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees."

15 The Supreme Court itself has recognized this inequality of bargaining power, which is one of the things that the Act seeks to correct.

I quote from Holden vs. Hardy, 169 U. S. 366, at page 397:

"The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of

these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority."

So much, then, for the question of the inequality in the treatntent of employers and employees which has been mentioned by Mr. Merrick.

In conclusion, I want to call to the attention of the court the fact that the findings of congress are entitled to great respect. It
16 is true that the Supreme Court is not conclusively bound by those findings; nevertheless, the only question which the court, or any court dealing with the constitutionality of this Act can enter into, when there are findings, is the question of whether or not the means adopted have a reasonable relation to the end sought to be achieved. And as long as there is no obvious lack of connection between the means and the end, it is not for the court to pass its judgment on the economic wisdom of congress in enacting this legislation.

Trial Examiner EICKHOFF. Have you anything further, Mr. Merrick?

Mr. EDISES. Just a moment. May it please the court I wish to, in view of the argument here advanced, move this court to dismiss the motion of respondent for dismissal of this case.

Trial Examiner EICKHOFF. Anything further, Mr. Merrick?

Mr. MERRICK. No.

Trial Examiner EICKHOFF. The decision on the motion will be reserved.

Is there any statement in connection with the main case that you care to make, Mr. Edises?

Mr. EDISES. I beg your pardon?

Trial Examiner EICKHOFF. Have you an opening statement to make in connection with the main case?

Opening statement

17 Mr. EDISES. Yes. The complaint, which has been filed by the Board, charges violations of Section 8, subdivisions (1), (2), and (3) of the National Labor Relations Act.

Respondent, in its answer, makes certain admissions and certain denials.

Paragraph 1 of the complaint alleges, in substance, that respondent is a corporation organized and existing under and by virtue of the laws of the state of California, and that it has offices in Oak-

land, Los Angeles, San Diego, California; Portland, Oregon; Seattle, Washington; Tacoma, Washington; Honolulu, and Manila and this is admitted by virtue of its not having been denied.

Paragraph 2, which states in substance that respondent is engaged in the business of transmitting and receiving telegraph, radio, cable, and other messages from and through the states and territories of the United States, other than the state of California, and foreign countries to and from the state of California, all of the aforesaid constituting a continuous flow of trade, traffic, commerce, and communication among the several states and territories of the United States and with foreign countries, is likewise admitted.

Paragraph 3 is likewise admitted: that the aforesaid operations of respondent occur in the course and current of commerce among the several states and territories of the United States and with foreign countries, and are an integral part of the operations of
18 instrumentalities of such commerce, and constitute commerce among the several states and territories of the United States and with foreign countries.

Paragraph 4 states:

"The respondent, through A. C. Jorgensen, its traffic manager, and by its various agents and employees on October 5, 1935, while engaged at San Francisco as described above, did discharge A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone, and G. E. Palmer, operators employed by the respondent at the San Francisco office, and has at all times since said date refused to re-employ these said employees"—and so on.

This paragraph is denied and there is a statement which apparently is something in the nature of an affirmative defense.

Paragraph 5, stating that the reason why these men were discharged and refused re-employment, is that they joined and assisted a labor organization, known as American Radio Telegraphists' Association, San Francisco Local No. 3, and engaged in concerted activities with other employees in the San Francisco office for the purpose of collective bargaining and other mutual aid and protection, is likewise denied.

Paragraph 6 is denied, which is to the effect that by that discharge and refusal to re-employ, the respondent did interfere with,
restrain and coerce its employees in the exercise of the rights
19 guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

Paragraph 7 is denied: that by that discharge it did discourage and is discouraging membership in the American Radio Telegraphists' Association, San Francisco Local No. 3, in violation of Section 8, subdivision (3) of the Act.

The next paragraph, paragraph 8, alleges:

"The respondent by its various agents and employees, on October 5, 1935, did initiate and form a labor organization or plan for the

purpose of dealing with its employees concerning grievances, labor disputes and conditions of work and for the purpose of interfering with, restraining, and coercing its employees in the rights guaranteed them under Section 7 of said Act, and did dominate and interfere with the administration of said labor organization or plan and contribute financial and other support thereto."

That is denied and there is an affirmative defense which states in effect that on being approached by certain employees the respondent's agent, without authorization, paid for a hotel room in which a meeting was held.

Paragraph 9 is denied.

Paragraph 10, which charges a violation, by said plan, of Section 8, subdivision (2) is denied.

Paragraph 11, which charges that:

20 "The aforesaid unfair labor practices of respondent have occurred and are occurring in the course and current of commerce among the several States and territories of the United States and with foreign countries, and have led and tend to lead to labor disputes and other forms of industrial strife and unrest which have the intent and necessary effect of burdening and obstructing said commerce and the free flow thereof, by impairing the efficiency and operation of instrumentalities of said commerce."

That paragraph is denied.

There is a denial of any obstruction of interstate commerce or intent to obstruct interstate commerce.

Paragraph 12 is likewise denied.

Trial Examiner EICKHOFF. Do you care to make any statement at this time, Mr. Merrick?

Mr. MERRICK. No.

Trial Examiner EICKHOFF. You may proceed.

Mr. EDISES. I would like to add a statement of the substance of what we expect to determine from the evidence which will be introduced in this case.

From the evidence which will be introduced we expect to determine, first of all, the nature of the business which the Mackay Radio and Telegraph Company is engaged in, with a view to determining the scope and extent of its participation in interstate commerce.

21 Second, we expect to determine, from the evidence which will be introduced, whether ARTA, which is the abbreviation for American Radio Telegraphists' Association, is a labor union, labor organization, within the meaning and protection of the Act; whether or not these five men were active in this organization; whether or not they held offices in this organization, participated in negotiations on behalf of the organization with Mackay Radio; the circumstances under which ARTA was organized and the part, if any, which these five men played in the organization of ARTA and the extent to which their activities came to the attention of the Mackay Radio & Telegraph Company; the negotiations which were

carried on with Mackay Radio & Telegraph Company by ARTA and, particularly by these men; whether or not they played an active, or the most active part in those negotiations; the particular activities of the men in ARTA, particularly, those activities directly connected with Mackay Radio and in which they took a prominent part; the nature of the negotiations carried on with Mackay Radio & Telegraph Company during the middle part of 1935 in which the labor organization and these men proposed an agreement in regard to wages, hours, and working conditions; the circumstances immediately preceding and leading up to the strike, which was called on or about October 4, 1935; the part which these five men played in those negotiations; whether or not they were active on strike
22 committees; whether or not their negotiations and their activities came to the attention of Mackay Radio; the circumstances under which the strike was terminated; whether or not Mackay Radio & Telegraph Company, through its officers or agents, were concerned in the setting up of a scheme or plan or device which interfered with the exercise of the rights of the men to self-organization; whether or not the refusal of the Mackay Radio & Telegraph, Company, after the calling off of the strike, to re-employ certain of the men, including the five who are the complainants in this case, was on account of their activities in the union, and, particularly, on account of their participation in the strike and in the events leading up to it; further developments of this plan which is alleged to have constituted an interference with the men's rights to self-organization; whether or not the officials of the company have gone on record as, or whether they have stated the reason why these men were refused re-employment; whether or not that reason was not their activities in the union and their activities in connection with the strike which lasted from a period of October 4th to about October 8th.

I should like to call, unless Mr. Merrick wishes to make a statement in reply, as the first witness for the Board, Mr. Rone.

Trial Examiner EICKHOFF. Just a moment. While that is going on we will take a recess for five minutes. (Referring
23 to placing of chairs at counsel tables.)

(At this point a recess was taken after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. You may proceed.

LON N. RONE was called as a witness for the National Labor Relations Board, and being first duly sworn, testified as follows:

Direct examination by Mr. EDISES:

Q. What is your name?
A. Lon N. Rone.
Q. What is your address?
A. 225 Jones street.
Q. San Francisco?
A. Yes.

Q. Are you married?
A. Yes.
Q. Any children?
A. No.
Q. When did you go to work for the Mackay Radio & Telegraph Company?
A. The first time was in the spring of 1927; later the service was broken and I went back to work for them in January, January 13, 1930. Since that time my service has been continuous.
24 Q. What is your job?
A. Radio operator.
Q. What class?
A. Class A.
Q. What salary were you receiving up to the time that you lost your job?
A. $180.00 a month.
Q. When did you last receive an increase in salary, Mr. Rone?
A. In 1934, I believe, in August.
Q. And how much was that increase?
A. $11.00.
Q. $11.00 a month?
A. $11.00 a month, yes, sir.
Q. Did you receive any—withdraw that—what month in 1934 was it?
A. I am quite sure it was in August.
Q. Did you receive any previous increases?
A. Previous to that, yes, I had received on two occasions an increase; first, from $150.00 to, I believe, $159.60. I am not positive of the cents, or the amount, but it was in that range.
Then I received another increase to $169 some odd cents.
Q. What is Class A, is that the highest class?
A. Class A is defined as the highest class operator.
25 Q. Receiving the top salary?
A. Yes, receiving a top salary.
Q. Will you describe particularly the work that you do, Mr. Rone?
A. I am supposed to be able to—to be a Class A man I am supposed to be able to relieve anyone in the office; that is, on the transcribing tape, manual operations, and telegraph.
Q. Describe the work itself that you do as an operator.
A. My work as an operator in the last year has been strictly transcribing tape that has come in, being imprinted by a machine, and I transcribe onto telegraph blanks from the tape.
Q. Are you a member of the American Radio Telegraphers' Association?
A. I am.
Q. When did you join ARTA?
A. In the early part of 1934.
Q. Did you ever hold any offices in it?
A. Yes.

Q. What were they?
A. I am a member of the administrative committee.
Q. What is that?
A. The administrative committee was elected to plan and compile data, to contact the membership of the organization who were
26 employed by Mackay Radio, with a view of compiling a working and wage agreement.
Q. How long were you on this administrative committee?
A. Since February, 1934. Prior to that I had been elected to minor committees.
Q. Who else was on this administrative committee?
A. Mr. Sam York, Mr. O. M. Salisbury.
Q. Were you a charter member of the ARTA?
A. I was one of the first, yes.
Q. Did you participate in its organization?
A. Yes.
Q. What, specifically, did you do in connection with the organization of the ARTA?
A. I helped in the organization of it. I took part in committees; I attended all meetings, and during the first year I spent five to six hours every week in committee, drawing up the Mackay Radio point-to-point working and wage agreement, making reports to the membership and the like.
Q. How did you happen to join the ARTA?
A. Because of the deplorable working conditions of the Mackay Radio and——
Mr. LIVINGSTON. (Interrupting.) We object as incompetent, irrelevant, and immaterial as to how he happened to join.
Trial Examiner EICKHOFF. Objection overruled.
A. (Continuing.) Also because of the flagrant violations of the NRA emblem posted.
27 Trial Examiner EICKHOFF. I would suggest that the witness confine himself to the facts, without using such words as "flagrant."
Mr. LIVINGSTON. We ask the answer be stricken as not responsive, and as incompetent, irrelevant, and immaterial, and merely a diatribe on the part of the witness.
Can we get a ruling on the motion?
Examiner EICHKOFF. The motion will be granted and you may repeat your question. In other words, we do not want argument, you understand.

By Mr. EDISES:

Q. How did you happen to join the ARTA?
Mr. LIVINGSTON. Same objection and on the same grounds.
Trial Examiner EICKHOFF. Overruled.
Mr. MERRICK. Do we need to note exceptions?
Trial Examiner EICKHOFF. I don't believe so.

Mr. LIVINGSTON. May we have an understanding then, that as to any adverse ruling it is deemed an exception is duly taken?

Trial Examiner EICKHOFF. Is that stipulated?

Mr. EDISES. So stipulated.

Trial Examiner EICKHOFF. You may proceed.

By Mr. EDISES:

Q. Go ahead and answer.

A. Because of the deplorable working conditions and——

Mr. LIVINGSTON. (Interrupting.) I ask that the witness be instructed to follow the admonition of the Examiner and
28 start all over again.

By Mr. EDISES:

Q. Mr. Rone, I just want you to tell us some facts in regard to these conditions that you mentioned, but don't characterize them. Tell us the facts.

A. Yes—because of the working conditions that were imposed upon the men of the Mackay Radio at that time.

Q. What working conditions do you have reference to?

A. The favoritism was one; the placing of certain men in favorite tricks, that is, so they could have the best hours; the raising of some men over men who had the seniority; the omission of the seniority rule handed down by their——

Mr. LIVINGSTON. (Interrupting.) Mr. Reporter, will you read the answer so far?

(The answer referred to was read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Go ahead.

A. (Continuing.) Handed down by their vice-president, Mr. A. Y. Tuel.

Q. What was this ruling that you referred to, Mr. Rone?

A. I will have to quote Mr. Tuel to give you that, if it is permitted.

Q. If you know about it, sure.

A. Mr. Tuel stated that he had placed in effect himself this seniority rule——

Mr. MERRICK. (Interrupting.) I think it should be shown
29 whether he stated this to this witness, or what is the basis of this witness' knowledge of the statement.

Trial Examiner EICKHOFF. Later, on cross examination, you can bring that out.

Mr. MERRICK. Otherwise, I object to it on the ground that it is hearsay.

Trial Examiner EICKHOFF. You make the objection?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. Objection overruled.

By Mr. EDISES:

Q. Go ahead and tell us what you know of your own knowledge.

A. Mr. Tuel stated the seniority had been placed in effect in the Federal Telegraph Company, which later became the Mackay Radio, himself, and it was not his desire that it not be carried out. That was one of the reasons for the organization.

The other reason was that the wages paid was from $15.00 to $30.00 per man less than competing companies in the same field were paying.

Another reason was the omission of vacations.

Then, when the company placed an emblem of the NRA on the door they didn't comply with the provisions of NRA.

Mr. LIVINGSTON. We ask that statement go out as a conclusion of the witness.

Trial Examiner EICKHOFF. We will hear the statement.

30 Mr. LIVINGSTON. The statement was, they didn't comply with the provisions of NRA.

Trial Examiner EICKHOFF. The witness hadn't completed his statement. When completed I will take it up as a whole.

Mr. LIVINGSTON. Thank you.

By Mr. EDISES:

Q. Go ahead.

A. (Continuing.) The company didn't comply with the provisions of NRA in letter or in spirit in paying us overtime for any time worked over the period of the time set by NRA, and stated it be overtime.

Mr. LIVINGSTON. We renew our motion to strike out the statement that the company hadn't complied with the letter or spirit of NRA, as being the conclusion of the witness.

Trial Examiner EICKHOFF. The motion is denied.

Kindly explain your last answer.

A. Yes. I had been called upon, on numerous occasions, to work a great deal of overtime. According to the NRA they were to pay time and a half for anything over 192 hours, I believe. Some months I worked as high as 115 to 220 hours and I received no benefits from that. I received only straight time for that. That was one of the main reasons that I joined the NRA.

By Mr. EDISES:

Q. You say the NRA?

A. I mean, that I joined the ARTA.

Examination by Trial Examiner EICKHOFF:

31 Q. Was this under a code or under an agreement between the company and its employees, this matter of overtime?

A. The matter of overtime was under the code.

Q. In other words, you state they didn't live up to the code and pay you for overtime in accordance with the code?

A. Yes, that is the statement I make. I am making the statement that the reason I joined the ARTA was because of these things.

Q. I understand.

By Mr. EDISES:

Q. Anything further on that point, Mr. Rone?

A. Well, the lack of collective bargaining or the right to bargain for one's self alone was not provided.

Q. Will you explain that statement?

A. Yes. If there was anything—if a party felt he had been discriminated against, there was no avenue to take it to the heads of the organization. One merely wrote a letter to the chief operator, if he thought he had some reason to go to the general superintendent of the west coast, and that was the end of it. The letter was laid on his desk.

Q. Weren't you permitted to complain to the chief operator?

A. That is as far as it went.

Q. What do you mean by that?

A. Well, the procedure was supposed to be, and generally understood, that Mr. Rodman, the general superintendent of
32 the Mackay Radio on the west coast, would see you at any time, and time after time you made the request to see Mr. Rodman, you would always get the same answer, "Rodman is busy." or "Rodman don't want to see you."

Examination by Trial Examiner EICKHOFF:

Q. You mean that was your actual experience?

A. That was an actual experience.

Q. Your personal experience?

A. Yes.

Q. That you asked to see Mr. Rodman and didn't get to see him?

A. That is right.

By Mr. EDISES:

Q. Do you remember any particular occasions when you tried to register a complaint of some kind and were not permitted to do so?

A. Yes.

Mr. LIVINGSTON. May we interpose an objection at this time to this entire line of testimony on the ground that it does not tend to prove any allegation of the complaint, is not responsive to any issue of the case, is incompetent, irrelevant and immaterial primarily because of the fact that the complaint made charges us with certain violations of the Act, and whether the witness had his own troubles back in 1934 or not, is not material to whether we did violate the Act particularly specified.

33 I will ask, subject to being overruled by Mr. Merrick, that the objection run to this entire line, so we will not have to repeat it.

Mr. EDISES. I want to state that I believe this line of questioning is perfectly relevant and material, for the reason that it is neces-

sary to have all of the facts, not only contemporaneous with, but antecedent to the alleged discriminatory refusal to re-employ these men in order to know with what intent that discriminatory refusal to re-employ took place. In other words, we have to know the background in order to be aware of how these facts arose. These preceding facts are not disconnected, not something that suddenly and spontaneously arose out of nothing. If this man participated early in the history of ARTA, we are entitled to bring that fact out because the bearing of that upon his present discharge is obvious. These things are not spontaneously generated, they are integrally related to the present complex circumstances.

Mr. MERRICK. May I say something on that?

Trial Examiner EICKHOFF. Proceed.

Mr. MERRICK. The company has not the slightest desire to avoid having all of the facts that are relevant to the issues formed by the complaint and the answer in this case brought forth before the Examiner. On the other hand, we do think that it is extremely
34 inadvisable to go into these correlative matters that are not directly involved, because they are going to take up an enormous amount of time. If this witness is allowed to go into those little details and relate something that does not bear directly on the issues, we necessarily will have to cross examine him at considerable length on them and introduce affirmative testimony in contradiction of the statements he may make, and this hearing will be prolonged indefinitely without, in my opinion, assisting the Examiner in any way in deciding the issues here.

As I understand it, the only possible basis for this line of testimony is to support the charge that this man was discharged or denied re-employment by reason of his activities as a member of the organization called ARTA.

I can not understand how it is possible that what happened in regard to complaints that were made by this witness at some time back can have any bearing on whether or not at this time he was refused re-employment because of his membership. He hasn't asked him whether the company knew, at the time these complaints were being made by this witness, whether the company knew that he was a member. He is not attempting to show that at that time he was refused an audience because he was a member of the union; and even if he were, that is not charged in this complaint.

The only actions complained of here, as I understand, are
35 those that took place subsequent to October 4, 1935. It seems to me that, with possibly some leeway, not very much testimony as to what took place prior to that date is really relevant in this proceeding.

Trial Examiner EICKHOFF. You have an objection to this line of testimony?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. The objection is overruled, with the understanding that it goes to all testimony along this line. Is that agreeable?

Mr. EDISES. It is agreeable.

Trial Examiner EICKHOFF. And later on perhaps we will narrow it down, but just now I am interested in getting some of the background.

Mr. MERRICK. I would like to ask whether you are going to permit cross-examination in full on any statement of the witness.

Trial Examiner EICKHOFF. Certainly.

Mr. MERRICK. And introduction of witnesses to contradict his testimony?

Trial Examiner EICKHOFF. Certainly.

Mr. LIVINGSTON. May we then at this time, Mr. Examiner, move to strike all the testimony that has been given by this witness as to anything which occurred prior to his joining ARTA, on the same ground heretofore stated?

36 And, in line with the Examiner's statement, may I suggest that it be taken under submission and possibly you will conclude, as we do now, that all of this irrelevant matter should go out ultimately, so that we won't have to meet those issues and protract the trial for some months? So I ask the Examiner to take it under submission, rather than make a ruling at this time.

Mr. EDISES. I believe the Examiner has already ruled on the matter.

Trial Examiner EICKHOFF. Not the motion to strike. The motion to strike is taken under submission.

Mr. EDISES. May it please the court, I feel that I am as anxious as counsel for respondent to see to it that all the testimony that is brought into this case is relevant.

Trial Examiner EICKHOFF. I think we appreciate that. You just proceed and hold it down to as definite statements as possible.

Mr. EDISES. I think it will be demonstrated that all of this has a bearing on specific issues.

Trial Examiner EICKHOFF. Let's not be too general.

Mr. EDISES. Mr. Reporter, will you read the last question? I do not think the witness completed his answer.

(The question referred to was read aloud by the reporter as above recorded.)

A. Yes. I wanted to see Mr. Rodman in regard to a transfer to New Orleans, where a new station was to be opened. I

37 asked the chief operator——

Mr. LIVINGSTON. (Interrupting.) I would like the names, time, place, and persons present, if the Examiner please, in connection with the conversation.

Trial Examiner EICKHOFF. Fix the time, place, and circumstances.

A. The time was early in—either late in 1933 or early in 1934. A new station was to be opened in New Orleans. I desired to transfer,

and asked Mr. Layman, then chief operator of Mackay Radio at San Francisco, if he would intercede for me to get this transfer. He said "No." I asked if I could see Mr. Rodman, and he said "No."

Then I said "If I write him a letter will you forward it to him?"

He said, "No."

But I wrote the letter anyway and gave it to Mr. Layman. At that time I was discussing—I don't think that is relevant—with Mr. A. C. Jorgensen, now chief operator of Mackay Radio, the possibilities of this being ruled on. Mr. Jorgensen and myself later pointed out that the letter had not left Mr. Layman's desk.

By Mr. EDISES:

Q. How did you find that out?

A. We found it out through channels in the operating room.

Q. Someone in the operating room told you?

A. Someone told me, whom I don't remember at this time.

38 Q. Did you ever endeavor to make any other complaints to Mr. Rodman or any of the officers of the company?

A. Well, I——

Examination by Trial Examiner EICKHOFF:

Q. Just a minute, please. Did you consider that in the nature of a complaint or grievance?

A. No. My reason for bringing this out is that we had no voice with the actual, with the coast manager. We should have had an opportunity to see him. I am not contending it was a fault of the general manager of the west coast. It was the conditions that we were working under.

Q. You mean you couldn't get in contact with him?

A. That is right.

Q. But you are not reciting that as a grievance or a complaint?

A. No.

Q. Except the fact you couldn't get in touch with him?

A. Except the fact that I was told I had better desist or I would be fired.

By Mr. EDISES:

Q. Was this the usual practice, to your knowledge, in the Mackay office here?

Mr. LIVINGSTON. That is objected to as calling for a conclusion of the witness.

Trial Examiner EICKHOFF. I do not think you have laid a foundation for that. Objection sustained.

39 By Mr. EDISES:

Q. Do you know of any other specific instances in which interviews with company officials in regard to working conditions, grievances, or requests were denied?

A. Only generally. I could not give times and dates.

Q. Were you concerned in any other?

A. No.

By Trial Examiner EICKHOFF:

Q. Let me understand it: Is this the only occasion on which you endeavored to get in touch with officials of the company and you could not?

A. That is true.

By Mr. EDISES:

Q. Do you know of your own knowledge of any instance of the favoritism that you have spoken of?

A. Yes.

Q. Will you tell us what that was?

A. Yes. When Mr. O. M. Salisbury went to work for Mackay Radio——

By Trial Examiner EICKHOFF:

Q. Who was Mr. Salisbury?

A. Mr. Salisbury is a radio operator who was employed in 1933, I believe, or 1932 by the Mackay Radio. When he was employed the procedure outlined under the seniority was that the men with the most seniority were to have the best working hours.

Mr. Glenn E. Palmer at that time was working a day watch. Mr. Salisbury was assigned to the mid-watch, that is, 12
40 midnight until 8 in the morning.

Mr. MERRICK. Excuse the interruption, but it seems, inasmuch as I understand that the Board is going to call Mr. Salisbury as a witness, that it is much better that testimony in regard to any favoritism involving him should come from Mr. Salisbury and not from this witness.

Mr. EDISES. I do not know definitely whether or not Mr. Salisbury will be called. He probably will, but if this man knows of anything of his own knowledge I believe he is entitled to tell it.

Mr. MERRICK. We wish, before you get the answers, you would find out the basis of his information before he starts his story.

Mr. EDISES. I asked if he knew of his own knowledge.

Trial Examiner EICKHOFF. Are you making an objection?

Mr. MERRICK. I am objecting to it on the ground that so far he has not qualified this witness to answer the question. He is asking if he knows of his own knowledge, but the way the witness starts out it is apparent he can not know of his own knowledge of the favoritism.

Trial Examiner EICKHOFF. I don't think that appears.

Mr. MERRICK. How can he know the standing of Mr. Salisbury on the list as to seniority?

Mr. EDISES. He knows Mr. Salisbury was——

Trial Examiner EICKHOFF. (Interrupting.) Never mind. The objection is overruled and the witness can proceed. He
41 says he knows and he is now proceeding to tell us. If you can show he had no way of knowing, or didn't know, you may.

Mr. EDISES. Will you read the witness' answer as far as he got, Mr. Reporter?

(The last answer of the witness referred to was read aloud by the reporter as above recorded.)

Trial examiner EICKHOFF. You may proceed.

A. (Continuing.) After a period of two or three months Salisbury became tired of the 12 to 8 a. m. shift and asked the chief operator if he couldn't place him on some other shift. At that time the chief operator placed Mr. Palmer on the mid-watch and Mr. Salisbury, who was two or three years junior in seniority, on the mid-watch.

By Mr. EDISES:

Q. Was there any advantage of this placement on the mid-watch, or disadvantage?

A. It was a disadvantage. He was going to work at 12 midnight and would not get off until 8 o'clock in the morning.

Q. Were both of these operators of the same class?

A. I believe they were at that time; yes.

Q. Do you know of any other specific instances of this allaged favoritism?

Examination by Trial Examiner EICKHOFF:

Q. Just a moment! On what did you base your charge of unfairness in that connection?

42 A. The basis for unfairness in this connection is that the 12 midnight until 8 o'clock a. m. watch is two or three times as hard as a day watch, or the 4 to 12 watch, inasmuch as you have no time for social life, and it is hard to sleep; your health goes to pieces.

Q. And do you contend, or do you testify that the only thing involved there was favortism?

A. Favoritism shown Mr. Salisbury; yes.

Q. That is the reason he was turned down?

Mr. MERRICK. I think——

Trial Examiner EICKHOFF. (Interrupting.) I may be confused.

Mr. EDISES. He is making this statement with reference to the rule of seniority, which he has testified had been prescribed by one of the company officials. Now he is giving evidence to the effect that a new man was hired and was given a preferential watch, in violations of the rules of seniority.

Is that correct?

The WITNESS. That is correct.

By Trial Examiner EICKHOFF:

Q. And purely because of favoritism; is that also your testimony?

A. Yes.

Mr. LIVINGSTON. Palmer was the new man?

The WITNESS. Mr. Salisbury.

Mr. LIVINGSTON. And was favored; is that it?

43 The WITNESS. That is true.

By Mr. EDISES:

Q. Do you know of any reason why this move could have been made, other than favortism?

A. I do not.

Q. Do you know of any other specific instances of this favoritism that you speak of, or violation of seniority?

A. I know dozens of them. It is all general. I believe it will come out in later testimony.

Q. Do you know of your own knowledge of any further ones?

A. No.

Q. You mentioned that vacations were one of the reasons why you joined ARTA. What did you mean by that? What did you have reference to?

A. I had reference to that, up until 1930, vacations were granted by the Mackay Radio and Telegraph Company. At that time vacations were cut down, or entirely omitted for some men.

In 1931, or perhaps later, vacations were totally omitted.

We worked very hard at this work and it was necessary that we have some time to rest and rebuild our bodies to carry on for another year.

Mr. LIVINGSTON. Mr. Edises, would you object to asking the witness whether he means vacation with or without pay?

44 By Mr. EDISES:

Q. No objection to that. What do you mean?

A. With pay.

Q. Is that all in connection with vacations?

A. The competing companies had granted vacations and——

Mr. LIVINGSTON. (Interrupting.) May I suggest, if the Examiner please, that testimony as to what competing companies do is certainly hearsay and certainly will involve a good many collateral issues. We can not go out and produce competing companies to meet a purely hearsay statement as to what somebody else does.

Trial Examiner EICKHOFF. I don't know as it is hearsay.

Mr. LIVINGSTON. What a competing company does?

Mr. EDISES. If it is hearsay I am willing that it go out.

Mr. LIVINGSTON. We don't know that he ever worked for a competing company and when; whether it was during the depression or when.

By Mr. EDISES:

Q. What is the basis of your knowledge of conditions in competing companies?

A. I have a friend operator who worked for the Globe Wireless and the Radio Corporation of America.

Mr. LIVINGSTON. I submit it is purely hearsay, as it was given to him by his friends.

By Trial Examiner EICKHOFF:

Q. Have you any other basis?

A. No.

45 Mr. EDISES. May I state this, your Honor: I do not want to insist on the technical application of the rule, as the common law rules of evidence do not apply to these cases, but as Mr. Livingston is aware, the rule in connection with the exclusion of hearsay was historically in its origin connected with the fear that the juries might be improperly persuaded.

Now, if the information that he gives us is not inherently improbable, if it seems pretty likely, I think that Mr. Eickhoff is competent to judge whether it ought to be admitted or not.

Trial Examiner EICKHOFF. I suggest we get along as fast as we can, and with fewer objections, because I understand this is background and that is the only reason I am particularly interested in it. On the other hand, it is entirely possible that one who does not work for a concern may understand and have knowledge of the vacation system of that concern.

Mr. MERRICK. It is also possible that he may misunderstand it.

Trial Examiner EICKHOFF. That is right.

Mr. MERRICK. I wonder if you feel now that this testimony is relevant? It has been brought out quite clearly by the last question that it is all addressed to the reason why he joined ARTA. What on earth is the possible relevancy of that in this case?

46 Trial Examiner EICKHOFF. We will go into that later. I am not answering questions.

Mr. MERRICK. It seems you have to answer that question or else we will have to keep making motions to strike.

Trial Examiner EICKHOFF. Objection has been made as to this line of testimony and it has been overruled. It is understood that your objection goes to all of that line of testimony.

Let us get on with the inquiry.

Mr. LIVINGSTON. Let me answer your inquiry, if I may, Mr. Examiner, with reference to this particular matter, this hearsay that I am objecting to. Just because it is hearsay I do not raise my objection. The rules of common law evidence do not control, but the rules of common sense evidence do.

Now, if a man is permitted to say on the stand that things happened far afield, in places that he had no personal knowledge of, or through what somebody else told him, then it is up to us to go out and get evidence to rebut those statements if we can. Now, if we do we will be here interminably. I am trying to cut down the trial by indicating now that, in the early stages, what kind of evidence we think ought to come in so that the Examiner may reach his conclusions accordingly.

Later on, after we find out where we stand, whether it is go-
47 ing to be a six months' trial or a six day trial, then we will know what we are up against. But at the present time if you

say, for example, that this witness may testify that John Jones told him that they had vacations with pay in the Globe Wireless during 1930 and subsequently thereto, then it is up to us to rebut that testimony. On the other hand——

Trial Examiner EICKHOFF. Can you rebut it?

Mr. LIVINGSTON. I don't know.

Mr. MERRICK. If it is relevant, they can call the Globe Wireless or the Radio Corporation of America representatives and ask them, if that is the kind of testimony that will help you in deciding the issues in this case.

Trial Examiner EICKHOFF. I will rule on each question as it arises. Your objection has been overruled in this connection.

Please go ahead.

Mr. EDISES. Mr. Reporter, read the statement that Mr. Rone started to make.

Mr. LIVINGSTON. I ask that the witness be instructed, if he is to testify to conversations, that he should tell us where, when, and with whom.

Trial Examiner EICKHOFF. That is agreeable.

(Whereupon the reporter read the record as follows:)

"Q. What is the basis of your knowledge of conditions in competing companies?

"A. I have a friend operator who worked for the Globe
48 Wireless and the Radio Corporation of America."

By Mr. EDISES:

Q. Go ahead, Mr. Rone, and state what was the basis of your knowledge.

A. Mr. C. R. Burtz, who roomed with Dave Lanaro, told me that all the men at RCA who had been there long enough were getting vacations.

Mr. LIVINGSTON. We ask for the date and the approximate time, according to the Examiner's order.

By Mr. EDISES:

Q. Do you remember approximately when that was?

A. In 1933 in the summer?

Q. The summer of 1933?

A. Yes.

Mr. LIVINGSTON. Do I understand him to say that Mr. Burtz worked for RCA?

By Mr. EDISES:

Q. Was that your testimony?

A. No. Mr. C. R. Burtz, who works for the Mackay Radio, lives with Mr. Dave Lanaro, who is employed by RCA.

Mr. LIVINGSTON. Who is the gentleman that told your witness, Mr. Edises, that RCA gave such vacations?

The WITNESS. Mr. C. R. Burtz.

Mr. LIVINGSTON. That is double hearsay. Does the Examiner rule that that may be let in?

Trial Examiner EICKHOFF. You are the one that is taking up the time. We are going to hear the explanation.

49 By Mr. EDISES:

Q. You mentioned something about your hours of employment. Will you explain just what that has to do with your joining ARTA?

A. Yes. Under the conditions under which we were working it was possible for the chief operator to place any man at any time, day or night, on a watch in total disregard of the standing seniority list. This he did, not only in my instance, but in several instances, which would be general with me.

Q. What, specifically, did this alleged violation of NRA have to do with your joining this organization?

Trial Examiner EICKHOFF. I think he has already answered that.

Mr. EDISES. I think he has.

The WITNESS. I can further——

By Mr. EDISES:

Q. Have you anything to add to your previous statement?

A. As to the NRA, there was an employee of the Telephone Company, Mr. McAllum, who was employed by the chief operator to work after his daily work at the Telephone Company was done, to work overtime at Mackay Radio. We took exception to this and that is another reason for us joining the ARTA.

Q. Do you know whether the Mackay Radio was cited before NRA for violations in connection with hours of employment and so on?

A. Mr. R. A. Pyle, now vice?president of the ARTA, told me
50 that action had been taken against Mackay Radio. The result of the action taken was that we got back pay for our overtime work. Mr. McAllum was dismissed.

Mr. LIVINGSTON. May I have that last answer? The last time we were cited to appear before the NRA Board I understand, is that correct, Mr. Edises?

Trial Examiner EICKHOFF. The reporter will read the answer.

(The answer referred to was read aloud by the reporter as above recorded.)

The WITNESS. Will you tell me (referring to the reporter) whether that doesn't read "an action taken against Mackay"?

(That part of the answer referred to by the witness was read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. How many hours a week did you work before NRA?

A. Forty-eight.

Q. Forty-eight?

A. Yes, sir.

Q. How many hours were prescribed under NRA?
A. 192, I believe.
Q. How many?
A. 192 in a period of four weeks.
Q. Meaning how many a week?
51 Mr. LIVINGSTON. Forty-eight.

By Mr. EDISES:

Q. Then NRA didn't impose any difference in your length of working hours, did it?
A. No. The only thing under NRA that we gained was overtime. There was a great deal of overtime at that time.
Mr. LIVINGSTON. Will you read the last answer, Mr. Reporter?
(The last answer referred to was read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Will you relate just how ARTA was formed in the Mackay plant out here, and when?
A. Early in 1933 several members of the H. B. Mackay Radio San Francisco operating staff had investigated the American Radio Telegraphists' Association and recommended it not only to myself, but I believe to the entire staff.
Q. Do you remember who made that recommendation?
A. Mr. McLaughlin, now supervisor of Mackay Radio, was the one who recommended that I go.
Q. Who else investigated it, if you know?
A. Mr. Cookson, Mr. O. M. Salisbury. I don't know by name, the others.
Q. Go ahead now and tell us how ARTA was formed out here at the Mackay plant.
A. After we had been approached by the men who had investigated this organization, we called a meeting at that time
52 and it was attended by a majority of the operators at the H. B. Mackay operating room.
Q. Where was that meeting held?
A. The meeting was held in a hotel on lower Market street, and I am quite sure it was the Lincoln hotel, although I can not say.
Q. Approximately when?
A. It was held, I believe, in February 1933.
Q. Were you present?
A. Yes; I was present.
Mr. LIVINGSTON. That was when?

By Mr. EDISES:

Q. When was that?
A. February 1933—no, 1934; I am sorry.
Q. You said you were present?
A. I was present.

Q. Do you know whether Mr. Loudermilk was present?
A. Yes; he was present.
Q. Do you know whether Mr. Bash was present?
A. Yes; he was present.
Q. Do you know whether Mr. Palmer was present?
A. Yes; he was present.
Q. Was Mr. Salisbury present?
A. Yes; he was present.
Q. What was done at that meeting?

A. Mr. Volney G. Mathison who, at that time, was vice-
53 president and organizer for ARTA, was chairman of the meeting. A great deal of discussion was made of our reason for joining an association. A vote was taken and, I believe, the vote was that we join the association. The majority of us present joined at that time.

Q. How many were present at that meeting?
A. I am not sure, but a majority of the operators at the Mackay Radio, I think.
Trial Examiner EICKHOFF. That is Mackay Radio of San Francisco?
The WITNESS. San Francisco.

By Mr. EDISES:

Q. You are referring to the H. B. operating room?
A. Yes, sir.
Q. What is that H. B. operating room?
A. That is the downtown office of the Mackay Radio, where the operators who actually transcribe, and receive and transmit signals, are employed.
Q. And what was done in the way of forming a permanent organization at this meeting, if anything?
Mr. MERRICK. I think this is a new line of testimony. The first line that we objected to was the line of testimony as to the reason why he joined ARTA. We objected to that and you reserved the ruling on a motion to strike.

Now, we renew our motion, or make a new objection to
54 this line of testimony which, apparently, is the story of the various meetings of ARTA.

Trial Examiner EICKHOFF. You mean you object to testimony that the labor organization was formed?
Mr. MERRICK. We admit the organization was formed, but now he is not asking whether it was formed, but what transpired at the meetings, and it has no bearing on the issues here.
Trial Examiner EICKHOFF. Just what is your particular objection to it?
Mr. MERRICK. The last question. He is telling what took place at the first meeting. There is no issue here as to whether certain employees of the H. B. office of Mackay Radio joined ARTA. That is not an issue here.

Trial Examiner EICKHOFF. Its pertinency may appear later. The objection is overruled.

Mr. EDISES. May I say a word in regard to that? I would like to know what question could possibly be more pertinent than——.

Trial Examiner EICKHOFF. (Interrupting.) You go ahead. The objection is overruled.

Mr. EDISES. If this objection is going to be renewed I would like to have my answer in the record once and for all, but if it isn't, then very well.

Will you read the last question, Mr. Reporter?

55 (The pending question was read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Will you answer the question?

A. I believe at that particular meeting not a great deal was done other than an expression was made by the chairman, Mr. Mathison, and by A. B. Loudermilk, who was elected at that time secretary, that we should all work to organize the rest of the men in the employ of the Mackay Radio.

Q. Do I understand you to state that at that meeting Mr. Loudermilk was elected secretary of the organization?

A. You did, but I am mistaken. Mr. Orell was.

Examination by Trial Examiner EICKHOFF:

Q. Just what was being organized, a local?

A. A point to point division of the American Radio Telegraphists' Association.

Q. That is the San Francisco Local No. 3?

A. Yes.

Q. Will you explain the point to point part of it?

A. Yes. There is a differentiation between the marine operators and the point to point men in the union because of the difference of understanding the type of work that each group is employed in.

The men in the point to point group need representatives who understand point to point work to negotiate for them. The
56 marine men naturally need men who understand marine work to do their negotiation. So a differentiation was made between the two groups.

By Mr. EDISES:

Q. Do I understand you to state that the ARTA local, which was organized here, had two divisions, the marine group and the point to point group; is that correct?

A. Yes.

Q. What do you mean by point to point; what does that mean?

A. The point to point was to embrace all work from one point on land to a definite and decided point on another point of the land. The marine was anything pertaining to marine operations, such as going to sea or working on a ship.

Examination by Trial Examiner EICKHOFF:

Q. In point to point you are broadcasting, sending from one definite station to another?

A. Yes.

Q. And in the other you are just broadcasting?

A. The other is from one ship to another ship, or from a ship to shore, or from the shore to ship.

Q. Both these divisions were in this Local No. 3?

A. Yes.

Q. They were not separate locals?

A. No; not separate locals.

Q. And the men in both divisions were in this same office, or operating room?

A. No. The marine men go to sea or work ships. The
57 point to point men work in the operating room from one definite and decided point to another, such as from Los Angeles to San Francisco, or from San Francisco to New York. The marine division, or the marine men, work on ships or they work from ships to shore.

Q. But none of them are ashore?

A. Only when the ships come in.

Q. Yes. Then all of the men in the office where you were, were point to point men?

A. Yes. That embraced the men who tune receivers, transmitter men who tune and place on the air the transmitters.

By Mr. EDISES:

Q. Are there a limited number of specific points that are worked at the H. B. office here?

A. Pardon me?

Q. Do you work any points, or just a limited number of specific stations?

A. A limited number of licensed stations; yes.

Q. What points do you work; what are the circuits?

A. Los Angeles to San Francisco, and from San Francisco to Portland, and from San Francisco to Seattle; and from San Francisco to Honolulu, San Francisco to Manila, San Francisco to Chicago, and San Francisco to New York. I believe that embraces them all from this point.

Q. Were any officers elected at this first meeting that you have been speaking of?

58 A. I previously stated Mr. A. B. Loudermilk was elected temporary chairman, or chairman. On recollection I recall that Mr. Orell was elected as either chairman or temporary chairman at that meeting.

Q. Any other officers?

A. Not that I recall.

Q. Were any committees formed then?

A. Not that I recall.

Q. As a result of that meeting did you enter into any negotiations of any kind with Mackay Radio?

A. Not on my part.

Q. Anyone else that you know of?

A. Yes. Shortly after that, the objection to the employment of McAllum, on after hours' work was made by, I know of, two members of the committee who made this objection, Mr. Orell and Mr. Loudermilk.

Examination by Trial Examiner EICKHOFF:

Q. Referring to the time you are now speaking of, had this local been completely organized?

A. It was being organized at that time. We didn't at that time have it 100 per cent .

Q. How many did you have in numbers from the Mackay Company?

A. I don't definitely—I couldn't definitely say, but for the
59 San Francisco operating room I believe we have a majority.

Q. How many would that be?

A. At that time I believe the office was around 55 men and we had, if I recall, 31 men.

Q. Thirty-one men who had indicated their desire or intention to join?

A. Who filed an application.

Q. And it was understood among them that they were to solicit as members the remaining operators?

A. Yes.

Q. And did they proceed to do that after the meeting?

A. Yes; we did.

Q. With what results?

A. With good results. After a period of time there were——

Q. (Interrupting.) Make it as definite as you can.

A. We held a meeting, held meetings a month apart. At each meeting we would get two or three new members. Naturally at the time, until the time of the strike, we had around 96 or 97 per cent of the membership in San Francisco.

By Mr. EDISES:

Q. At the time, how soon after the meeting that you have just spoken of, did the ARTA Local in San Francisco receive its charter?

A. I wouldn't know.

Trial Examiner EICKHOFF. About when did it receive it?

The WITNESS. I wouldn't know.

60 By Mr. EDISES:

Q. Did you have your charter at the time that this committee you spoke of made the protest?

A. My recollection is that a special vote was taken to permit the American Radio Telegraphists' Association to amend their by-laws

so that point to point men could be taken into the organization. I guess that could be deemed a charter for all point to point men; that is, prior to this meeting.

Q. Now, what was the—strike that—It was understood, wasn't it, at this meeting that these men——

Trial Examiner EICKHOFF. (Interrupting.) Which meeting?

Mr. EDISES. This first meeting, first organizational meeting.

Trial Examiner EICKHOFF. In the hotel room on Market street?

Mr. EDISES. Yes.

Q. It was decided that you were going to affiliate with ARTA, was it not?

A. It was. We were going to join ARTA.

Q. And when these men made applications were they applying for membership in ARTA?

A. They were.

Q. What took place in these negotiations in regard to this first complaint that you have mentioned, do you know?

Examination by Trial Examiner EICKHOFF:

61 Q. Let me interrupt here for a moment. At the time of these first negotiations with the company as a local, how far had your organization gone? To what extent were you organized? Approximately how many members did you have?

A. I don't have that data available, other than the majority of the employees in the San Francisco office. You can find that out from other officers of the organization.

By Mr. EDISES:

Q. When was Mackay Radio first notified of the formation of this organization?

A. I believe it was at the time the objection was made to Mr. McAllum's employment after hours.

Q. Do you know what took place at the time that objection was made?

A. No; I was not present.

Q. Can you tell us who was on the committee which presented the complaint?

A. I can not tell you all of them, but I believe Mr. A. B. Loudernilk and Mr. Orell were two.

Q. Do you remember any others?

A. I don't remember any others; no.

Q. Well, what was the upshot of those negotiations in regard to Mr. Orell's discharge?

A. Mr. McAllum's discharge.

Q. What was the upshot of it?

A. Mr. McAllum was discharged.

62 Q. Who was McAllum?

A. He was an employee of the Telephone Company who worked straight time at the Telephone Company and came to Mackay Radio to work overtime.

Q. Why did you object to that?

A. The main objection to that was their emblem of the NRA posted on the front door of Mackay Radio. We employees of Mackay Radio felt, if there wasn't a violation of the law and letter of the NRA it certainly was a violation of the spirit of NRA because we understood the NRA was especially designed to provide for employment. In employing Mr. McAllum, who was getting a great deal more money at that time than we were as operators, in employing him he was cutting down our standard of living.

Q. And as a result of your negotiations the man who was working these two jobs was discharged?

A. Yes.

Q. Is that correct?

A. That is.

Trial Examiner EICKHOFF. Discharged by whom?

The WITNESS. By Mr. Layman.

By Mr. EDISES:

Q. Mr. Layman being whom?

A. Chief operator of Mackay Radio at that time.

Q. Well, now, what was the next step in the organization of ARTA out here, of importance?

63 A. Well, we all worked hard to organize in the San Francisco office; in Lobitos, where the receivers are—I don't believe they are there now—but the group who tunes the receivers, and the transmitting men who tune and put the transmitters on the air, we all worked together to form up a solid fronted organization.

I was very active myself. Some of the other active men were Mr. Loudermilk, Mr. Orell and Mr. Bash, Mr. Salisbury, and myself.

Q. You mentioned Lobitos——

Examination by Trial Examiner EICKHOFF:

Q. Just a moment! What do you mean, you worked hard to do this? How did you go about it?

A. We held various meetings at some of the employees' homes and apartments; sometimes meeting at various places, discussing the possibility of an organization and what we needed in the way of an organization.

I spent sometimes one day a week at this and sometimes five or six days a week in the evening after my employment was done, doing that.

Q. At these times did you have any definite objective? Were there any particular questions you wanted to take up with the company at that time, or did you just feel they might arise in the

64 future and you would then have the organization?

A. No. We had many objectives in our organization, all of which I believe I have stated in the first part of my examination.

Q. Which, in general, were wages, hours, working conditions, and so on?

A. Yes.

Q. You wanted an organization to represent your group of employees?

A. Yes.

Q. In those matters?

A. Yes.

By Mr. EDISES:

Q. When did you elect your permanent officials of the organization?

A. I am not sure whether Mr. Orell became chairman or was only acting chairman. However, he was transferred to Seattle and resigned his chairmanship. Upon going there Mr. A. B. Loudermilk was at that time elected chairman of our organization.

Mr. MERRICK. I would like to find out whether he means by that, of the local itself or of the point to point division, or what does that mean?

The WITNESS. Of the Mackay Radio point to point division of San Francisco.

65 When I speak of the organization I mean the point to point group of the San Francisco local.

Mr. MERRICK. And you had a separate division for each of the companies whose employees were members of the union?

The WITNESS. There were two separate divisions in the ARTA: One was the marine division; the other was the point to point division. Then we did, by common consent, make a division between the Globe Wireless members of the organization, who were point to point men, and the Mackay Radio division of the point to point men, although I don't think there was any laws passed to that degree. The reason for doing this is that the Globe Wireless, or any other company who had employees who belonged to the organization, their problems were different from ours. Although we held one general meeting of the point to point group once a month, we had vorious small meetings of the Mackay Radio point to point men, the RCA point to point men, and the Globe Wireless point to point men, and in which we didn't have a common local interest. We had small local meetings.

Trial Examiner EICKHOFF. Does that answer the question?

Mr. MERRICK. He was chairman only of the Mackay Radio division of the point to point group?

The WITNESS. No; chairman of the point to point local of San Francisco of all of them.

Mr. MERRICK. The point to point division of the local?

The WITNESS. Yes.

66 Examination by Trial Examiner EICKHOFF:

Q. Which again was subdivided between the three companies?

A. Yes.

Q. Is that it?

A. Yes.

Q. And you only functioned as a group when all three were concerned; is that it?

A. We only had one general meeting once a month, but there were various company meetings, so-called company meetings.

By Mr. EDISES:

Q. Now, this Local No. 3, in other words, embraced both the marine and point to point divisions?

A. Yes.

Q. But the point to point group had an organization within the organization, is that true?

A. The point to point group had several organizations within the organization, that is, employees of different companies as before stated.

Q. What was Mr. Loudermilk chairman of?

A. He was chairman of the point to point division of the San Francisco Local.

Q. This included several companies?

A. Yes; all companies.

Trial Examiner EICKHOFF. What is the approximate date of the period you are speaking of, the time you are speaking
67 of?

The WITNESS. I would say August or September—I believe it was in the spring of 1934 that Mr. Loudermilk was elected.

Trial Examiner EICKHOFF. Two years ago?

The WITNESS. Yes.

By Mr. EDISES:

Q. Were any committees appointed whose duties included negotiations with the companies?

A. Yes.

Q. I am speaking of the point to point group.

A. Yes; there was a committee appointed in [referring to memorandum]——

Mr. LIVINGSTON. (Interrupting.) May I see the paper you are referring to?

Trial Examiner EICKHOFF. What is the paper?

The WITNESS. It is reference dates.

Trial Examiner EICKHOFF. Have you any objection to showing it?

The WITNESS. I have no objection to showing it to you.

Mr. LIVINGSTON. We are entitled to see it also.

Trial Examiner EICKHOFF. If you are going to use it you have to show it to counsel.

Mr. LIVINGSTON. He has used it and we are entitled to look at it.

Mr. EDISES. I haven't seen it myself.

68 Mr. LIVINGSTON. Supposing that the Examiner mark it so that we can look at it during the recess.

By Mr. EDISES:

Q. What are you using this for, to refresh your recollection?

A. I am trying to refresh dates.

Q. When was this paper prepared?

A. It was prepared last night.

Q. Well, do your best to remember these dates without employing this paper.

A. Yes.

Mr. EDISES. All right, then, let's not use it.

Trial Examiner EICKHOFF. It may be to your advantage to have him use it.

Mr. LIVINGSTON. We have no objection to his using it, but we would like the right to review what he uses, and for that purpose I suggest the Examiner mark it so it may be used, or looked at during various times so we won't take up so much time.

Trial Examiner EICKHOFF. As soon as he is through with it you may see it.

Mr. EDISES. Mr. Reporter, will you read the last question and answer?

(The question and answer referred to were read aloud by the reporter as above recorded.)

By Mr. EDISES:

69 Q. Approximately when was the committee appointed?

A. Approximately June 1934. The purpose of this committee was to contact Mr. A. Y. Tuel, then vice-president of Mackay Radio, who was at that time in San Francisco.

Q. Who were the members of the committee?

A. Mr. Glen Palmer, A. B. Loudermilk, O. M. Salisbury, Mr. Leo Bash, myself, and vice-president Volney G. Mathison, vice-president of ARTA.

Q. How was that committee selected?

A. It was selected by vote of the membership.

Q. And what did that committee do? Was that committee representative of just the point to point division?

A. It was representative of the point to point division only.

Mr. LIVINGSTON. Of the Mackay or all companies?

Trial Examiner EICKHOFF. The Mackay group or the entire group?

The WITNESS. Of the Mackay group only.

Trial Examiner EICKHOFF. Only the company group of the point to point division of Local No. 3?

The WITNESS. Yes.

Mr. LIVINGSTON. Would you mind asking the witness if it is a fact that the vote that selected this committee was taken in the Mackay group only?

Mr. EDISES. No objection to that.

A. It was taken only in the Mackay group.

70 Mr. LIVINGSTON. Thank you.

By Mr. EDISES:

Q. At the time of the election of this committee, did your point to point division include any employees at the Lobitos office of Mackay?

A. I didn't get the first part of the question.

Q. At the time that this committee was elected, this committee that you have spoken of—What was the name of the committee?

A. Relations Committee. It was first termed the Grievance Committee.

Q. Then changed to Relations Committee?

A. Yes.

Q. Were there any employees at the Lobitos office in your point to point division?

A. Yes.

Q. Were there any members of—What is the other offices?

A. Palo Alto M. X. There were members there of the point to point division.

Q. Any members of any other Mackay offices in your point to point division?

A. We endeavored to negotiate only for those who had voted for us on this committee. However, it turned out in negotiations that we had negotiated with the entire west coast.

Q. But you were intending to negotiate for the H. B. office, which is San Francisco?

71 A. Yes.

Q. What did this committee do?

A. The committee went to see Mr. A. Y. Tuel, vice-president of Mackay Radio.

Q. When?

A. At about June 1934.

Q. In San Francisco?

A. In San Francisco; and Mr. H. L. Rodman, the general west coast manager, I believe his title is, in Mr. Rodman's office.

Q. What was the object of your visit?

A. It was to discuss the demands we wished to make as to working conditions, wages, and favoritism, and the like that I have previously outlined.

Q. Do you remember what those demands were?

A. We were asking for a top salary of $185 a month; we were asking for the return of the seniority system in bidding for tricks.

Mr. LIVINGSTON. What is that?

Mr. EDISES. Bidding for tricks.

Q. Will you explain that phrase?

A. A trick is designated in telegraph offices as a period in which you work. Any given period that you work, you would designate that as a trick.

We asked, demanded that our wages be increased; that discrimination cease; that the seniority system be re-installed

72 and complied with. We had quite a discussion on this.

Mr. Tuel was present at this meeting; Mr. H. L. Rodman was present; Captain E. H. Dodd was present; Mr. Layman was present, and Mr. Jorgensen was present at this committee meeting.

Q. What was said at this meeting?

Trial Examiner EICKHOFF. Who were these men? Were they all members of your organization?

The WITNESS. No; they were company officials except Mr. Jorgensen who, at that time, was an operator but not a member of the ARTA.

Mr. EDISES. I believe his testimony was, those who were negotiating for the union were Loudermilk, Bash, Rone, Palmer, and Salisbury.

The WITNESS. Salisbury; yes.

By Mr. EDISES:

Q. And anybody else?

A. Mr. Volney G. Mathison was present at the meeting, yes.

Q. Was Mathison a local man?

A. Mathison had a roving commission as a delegate and organizer, also being vice-president of the ARTA.

Q. Well, what was done at this meeting? What was said and done?

A. A great deal of discussion was done by nearly everyone there. The result of the discussion was that we were given an increase
73 from the top of $169.00 to $180.00 a month. The chief operator was replaced; Mr. Layman was replaced by A. C. Jorgensen. The seniority system was reenacted and a letter appeared on the bulletin board, over Mr. H. L. Rodman's signature, instructing him to post the letter on the board, and informing the personnel of the office the results of the meeting in some points, such as the wages that were to be paid and the period of time it would take to pay the wages; also that the seniority and bidding was to go into effect, and instructing them how the bidding was to go into effect.

Q. Did the company grant all your demands?

A. They wouldn't give us a written or a contractual agreement.

Q. Did you ask for one?

A. Yes. They wouldn't give us the money we asked for.

Q. You mean the pay?

A. Yes.

Q. Go on.

Trial Examiner EICKHOFF. The pay came within $5.00?

The WITNESS. Came within $5 for the top. The lower brackets got 25 or 30 cents.

Trial Examiner EICKHOFF. You were negotiating for the different brackets?

The WITNESS. Yes; but we weren't successful in pushing up the lower brackets. The lower brackets, the Class D men, got only
74 a 25 or 50 cent raise out of this. We felt, however, it was unsuccessful, but it was a step on the road of an organization.

We had some discussion, when Mr. Tuel made his offer to us, and during the time that he talked to us he seemed quite worried about

the possibilities of a strike. He said, "I would like to give you fellows more money in all the brackets"——

Trial Examiner EICKHOFF. (Interrupting.) Just a minute! Is it particularly material what took place at this meeting in detail?

Mr. EDISES. I think that it is, your Honor. I don't think it will take long. I think he can clear it up.

Trial Examiner EICKHOFF. Make your inquiry along the lines that you think are particularly pertinent, without going into anything else on that.

By Mr. EDISES:

Q. Were the negotiations closed then after that meeting, or was any promise made in regard to future adjustments, or what?

A. I was stating that Mr. Tuel stated, during the negotiations, that he would like to give us more money, but that he had come to the west coast with a definite amount of money for raises; that he had already made raises in the east coast and he couldn't go over them and that he couldn't give us any more money because of the board of directors, but that if the NRA had not forced Mackay Radio
75 to a 40-hour week, or the IT&T hadn't increased a flat increase for the entire system, of four per cent, that he would be very glad to take the question up again on January first, 1935.

Q. That isn't quite clear. Do I understand you to say that Mr. Tuel promised that if, by January 1, 1935, the company had not granted a blanket four per cent increase——

A. (Interrupting.) Yes——

Q. (Continuing.) They would——

A. (Interrupting.) Or the NRA had not forced the company to place the personnel on a 40-hour week, he would be glad to again take up the question of more raises.

Q. Did he promise you a four per cent increase on January first?

A. No; he made no promise himself of a four per cent increase. The increase, he said, was to be blanketed all over the entire International Telephone & Telegraph system, of which Mackay Radio was a subsidiary.

Q. If the NRA did not impose a 40-hour week by January first, is that correct?

A. Yes.

Mr. LIVINGSTON. I think Mr. Edises led his witness into a statement which I do not think he intended to make. His original statement was that Mr. Tuel said, "If there isn't a blanket increase and if we do not have to reduce hours of work, I will be glad to talk to
76 you again on the first of January." Now, the witness testified that Mr. Tuel said, "There will be an increase of four per cent if the NRA does not reduce the hours."

I do not think that is the fact that they said "There will be." He said "There may be," and if there is——

Mr. EDISES. (Interrupting.) Let's see if the witness can clear that up.

By Mr. EDISES:

Q. Just what did Mr. Tuel promise?

A. Mr. Tuel made no promise.

Mr. LIVINGSTON. That is my point.

Mr. EDISES. If so, I am corrected.

The WITNESS. He made the promise that he would be glad to take the question of wage increase up again.

Trial Examiner EICKHOFF. If certain things did not occur in the meantime.

The WITNESS. Yes.

By Mr. EDISES:

Q. And those two conditions were, as I understand it, that prior to January first NRA had not imposed a 40-hour week and they had not previously granted this blanket four per cent increase, is that right?

A. That is right.

Q. Well, what happened then?

A. We, of the committee, decided to accept Mr. Tuel's offer inasmuch as we felt that he was sincere and that we were very glad to have him improve working conditions, and also the possibility
77 of more raises or shorter hours in the offing in the immediate future, it appeared to us, and we accepted these wages and conditions, that although they were not satisfactory to the entire membership, particularly those in the lower brackets who only received small increases, less than $1 some of them, it was generally accepted as a victory for the organization.

Q. Did you submit it to a vote of your organization?

A. No; we did not. The acceptance was not submitted.

Q. How did they express their acquiescence on it?

A. On voting on us for the committee they gave us the right to accept or reject.

Q. I see. You mentioned that some of the men in the lower brackets got an increase of 25 cents. What was that, per hour, per week, or what?

A. Per month.

Q. 25 cents a month?

A. I stated 25 or 50 cents, or something like that; not any definite sum. It was less than a dollar.

Q. Were the terms of this understanding reduced to writing?

A. No.

Trial Examiner EICKHOFF. I think that question was asked and answered.

By Mr. EDISES:

Q. Well, now, what was the next important stage in your ARTA work out here, Mr. Rone?

A. Well, each month we had monthly meetings, and there
78 was, particularly in the lower brackets throughout the entire

organization a great deal of unrest. They felt that they were entitled to higher wages, corresponding to wages paid by other companies in the same line. However, not a great deal of action was taken, because we felt that we should wait until Mr. Tuel's period of January first had expired and no action had been taken.

Q. Anything of consequence happen between the time of the negotiations you have just spoken of and January first?

A. Well, the only thing of great importance that happened at that time was when Mr. Tuel granted the raises to us, he granted us a higher raise then he had to the New York operators of Mackay Radio, who were not members of our organization. This naturally caused the New York operators to be resentful of the company organization, as they termed it in letters written to us, resentful of him, and they expressed a desire to join the ARTA.

Mr. MERRICK. Do you think this testimony is competent?

Mr. EDISES. He said it was expressed in letters to him.

Trial Examiner EICKHOFF. I can not see it right now, Mr. Edises.

By Mr. EDISES:

Q. Are you leading up to something now?

A. Yes.

Mr. MERRICK. I object to any testimony from this wit-
79 ness as to the attitude of people in New York, or other persons than those that he represented in his capacity as a member of this committee—that is testimony along this line.

Trial Examiner EICKHOFF. What is the pertinency of this line of testimony?

By Mr. EDISES:

Q. Did the H. B. office itself do anything during this period? That is what I want to know.

A. Yes. During this period of time we had elected Mr. A. B. Loudermilk as chairman of our organization, replacing Mr. Orell.

Mr. MERRICK. You said that had taken place in June 1934.

Mr. LIVINGSTON. In the spring of 1934.

The WITNESS. Yes; over this period of time.

Mr. MERRICK. You mean he was re-elected after that?

The WITNESS. No. I mean during the period of time of our organization, in that period of time. I was trying to state that Mr. Loudermilk was the secretary of the organization. Then we took it before the membership of the organization; that is, the advisability of aiding in the organization of the Mackay Radio men in New York. Due to the difference in wages paid between the two groups—we were getting a higher wage—it looked very advisable that we do this; otherwise they would be cutting our throat on future negoti-
80 ations we were to have with the company if their wage scale was lower than ours.

Examination by Trial Examiner EICKHOFF:

Q. What period was this? During what period of time?

A. This was either late August or early September.

Mr. EDISES. After the negotiations?

The WITNESS. Yes.

By Trial Examiner EICKHOFF:

Q. In 1934?

A. Yes.

Q. And the question arose whether the New York group should be made a part of your organization in some way?

A. Yes.

Q. Or whether you should affiliate them?

A. Yes.

Mr. MERRICK. They couldn't be affiliated with the San Francisco Local, could they?

The WITNESS. They could belong to the same organization.

Mr. MERRICK. But you couldn't have anything to say about that?

The WITNESS. We could; they could belong to the same organization.

Mr. MERRICK. I object to this testimony about New York. In the first place, this company has nothing whatsoever to do with
81 New York; does not operate in New York, and it is the only defendant in this proceeding here, that is the only party to it.

Trial Examiner EICKHOFF. Has it any bearing on the issues?

Mr. EDISES. It has. The witness has just been getting to the specific point each time he has been interrupted, your Honor. I think if he is permitted to say what he has in mind you will see the relevancy of it.

Trial Examiner EICKHOFF. I prefer you direct him in his testimony and try to keep him down to the line of your inquiry.

By Mr. EDISES:

Q. What did you do, did you send anybody east?

A. Had a meeting of the organization in late August, or in early September, we voted to send Mr. Loudermilk to New York for the purpose of aiding the organizing of the Mackay Radio employees in New York——

Q. (Interrupting.) Did you send him?

A. (Continuing.) Into the American Radio Telegraphists' Association.

Q. Did you send him?

A. The vote carried and he was sent and the trip was financed through contributions of the membership of the San Francisco Local.

Q. And how long was he gone?

82 A. A period of a month, I believe, or slightly less.

Q. Do you remember when he got back?

A. No; I don't.

Q. Did you furnish him with funds for the purpose, your organization?

A. We did.

Examination by Trial Examiner EICKHOFF:

Q. What was he to organize or assist in the organization of?

A. He was to aid in the organization of the Mackay Radio employees of New York City.

Q. And was that to be part of the American Radio Telegraphists' Association?

A. Yes.

Q. So that you would be a brother or sister local here, something of that kind?

A. Yes.

By Mr. EDISES:

Q. Well, did you take any kind of action at all in connection with Mackay Radio prior to January 1, 1935?

A. None that I recall.

Q. Did you get any increase January 1st, 1935?

A. No.

Q. Well, what did you do then?

A. After January 1, 1935, there was a great deal of resent-
83 ment——

Q. (Interrupting.) Just a minute! Let me ask you this: Did the N. R. A. impose that 40-hour week?

A. No.

Q. Go ahead with your answer.

A. Slightly after January 1, 1935, there was a great deal of resentment expressed that there had been no further wage increases and no reduction hours. A great deal of interest was shown by the entire membership, and at one meeting discussion was brought up of a contractual agreement, a working agreement with the company. A committee was designated to get this information of what all the members of the organization wanted in the way of working conditions and wages. Myself, Mr. Sam York, and O. M. Salisbury were elected to do this.

Mr. LIVINGSTON. York?

The WITNESS. Sam York, yes.

I believe that transpired in February 1935; over a period of from February until the first of June myself, Mr. O. M. Salisbury and Sam York met at various points and places and discussed a contractual agreement and the formation of it. We sent letters——

Trial Examiner EICKHOFF (interrupting). Just a minute, please! You were appointed to investigate the desires of the members of your local, is that correct?

84 The WITNESS. Right.

Trial Examiner EICKHOFF. Now you are starting to talk about the agreement.

The WITNESS. Well, I believe I stated in my statement before that this was with a view to a contractual agreement. That is the agreement I am talking about.

By Mr. EDISES:

Q. I think the point that Mr. Eickhoff is trying to bring out is this: Was this proposed agreement to be confined exclusively to the local Mackay office, or did you propose to obtain an agreement covering all of the Mackay, various Mackay offices in the United States, all of the point to point operators?

A. It was designed to cover the entire system of the Mackay Radio who had members in ARTA.

Examination by Trial Examiner EICKHOFF:

Q. Wait a minute! You were appointed to investigate the wants of your local, weren't you?

A. Yes.

Q. Were you to go further than that?

A. Yes; we were to go further to compile this information, and then the information was to be submitted back to the various locals.

Q. Back to your own local and other locals?

A. Yes.

Q. In the form of a proposed agreement?

85 A. It was strictly an investigation of the desires of the entire membership of Mackay Radio, what they desired, so that what we wanted as a group in one geographical location would not be at odds with a group in a different location. There was no authority to impose into this agreement, by the Administrative Committee, there was not advanced any authority to impose anything into this agreement as a law. We merely gathered information and submitted it to the membership, both of our own local and all the other locals.

Q. Let me see if I understand you. You, first of all, were to ascertain what your local wanted?

A. Yes.

Q. Then you were to canvass other locals involving your company employees to see that your demands might not be in conflict with theirs?

A. That is true.

Q. So that you would adopt the same platform, or something of that sort?

A. That is true.

By Mr. EDISES:

Q. Was it your plan subsequently to present this agreement, on behalf, not only of the local Mackay office, but also the employees of all of the other Mackay offices?

A. Well, the committee that was elected to investigate and compile the so-called Mackay Radio point to point working
86 and wage agreement, was not the one that was to present it. The presentation of the agreement was to be done by the

ARTA officials, namely, President Haddock and Vice-President Pyle, to the company officials in New York. It was to be an expression of the entire personnel of the Mackay Radio.

Q. Was that supposed to include non-members of ARTA as well as members?

A. Everyone was given a right to vote in this matter, yes. They were all mailed questionnaires.

Q. Well, then, what happened?

A. The document was compiled. It was passed and ratified by all the locals of the ARTA at that time in existence, excepting the New York downtown office known as M. K. The reason it was not accepted then was because they had become slightly disorganized. When it became known that the document was to be presented they immediately got busy and reorganized their local, the M. K. Local of the point to point group in New York. So we delayed the presentation of this document to the president and vice-president of the Mackay Radio until the New York local had had time to read and ratify everything that was in the working and wage agreement.

Q. Did they finally ratify it?

A. Yes, in its entirety.

Q. When did you first present this document to the company?

A. It was not presented by myself. I was informed that
87 it was presented by Mr. Haddock, president of the ARTA, and Vice-President Pyle, both to Mr. A. Y. Tuel, vice-president of Mackay Radio, and Mr. Ellery W. Stone, whose title I don't know.

Q. Where did that take place?

A. In New York City.

Examination by trial examiner EICKHOFF:

Q. By this time your local had adopted that proposed agreement as its demand on the company, is that right?

A. Yes.

Q. And so had every other local of the ARTA which had to do with Mackay Radio employees?

A. I didn't get that last.

Q. Every other local of ARTA, involving Mackay Company employees had also ratified this agreement?

A. Yes.

Q. And it was presented by the head of your general organization?

A. Yes; at the time, at the presentation——

Q. (Interrupting). This would be about when?

A. This would be, I believe, in June, or slightly prior.

Q. This year?

A. This year, 1935. At that time I was informed by officers
88 of the company—we were all informed by officers of the company—that the Postal Telegraph Company was going to court on a petition for bankruptcy and——

Mr. MERRICK (Interrupting). I would like to have the basis of this information further explained. He said he was informed by officers. Was it oral or written, or what?

Trial Examiner EICKHOFF. Would you lay the foundation?

By Mr. EDISES:

Q. Who told you about the Postal business?

A. It was read to the meeting by the local secretary of the ARTA.

Q. Where did the communication come from?

A. From New York City.

Q. Who from? From the company officials?

A. Mr. Roy Pyle, vice-president of the ARTA, wrote a letter to the general secretary of the ARTA, outlining the reason that they were not proceeding with the agreement at that time, and asking for information from the local as to what action was to be taken.

Q. Just a minute. I do not follow you. You stated that some time in June this proposed agreement was first presented to the company in New York. What I want to know now is what happened? Did the company accept this agreement?

A. Well, I was trying to bring out my source of information. A letter was written by Mr. Pyle.

Mr. MERRICK. I object unless he shows the basis of his information.

89 Trial Examiner EICKHOFF. He was getting along all right.

Mr. MERRICK. His information was contained in a letter from someone not a representative of this company. It seems to me——

Examination by Trial Examiner EICKHOFF:

Q. No; a representative of his labor board or organization; was that it?

A. Yes.

Q. Which letter was read in explanation of the delay in proceeding with the agreement; wasn't that it?

A. That is true.

Q. What was the explanation that was read?

A. The explanation read was that Mr. Pyle and Mr. Haddock had contacted with A. Y. Tuel, vice-president of Mackay Radio, and Mr. Ellery Stone, of Mackay Radio, whose title I don't know—however, he is a high official—and had been told by Mr. Stone and Mr. Tuel to please be good sports and let the agreement slide for a little while, as the Postal Telegraph Company, of which, I believe, the Mackay Radio is a subsidiary, was to go into court on a petition of bankruptcy; and if the ARTA point to point group would play ball with Mr. Stone and Mr. Tuel, they would do everything in their power to see that we got a fair deal and take care of us in their best way.

90 This was read to the membership here in San Francisco, and inasmuch as a great many of the men who belonged to this local knew Mr. Tuel personally, and us of the committee who had contacted him during the meeting I previously have referred to,

felt that Mr. Tuel was telling the truth and that we had best hold in abeyance the presentation of this document.

By Mr. EDISES:

Q. And so?

A. The vote was carried that we should delay the presentation of this document until a future time.

Q. Well, then, what did you do? Did you keep it as formulated, or did you amend it or change it in any way after that?

A. Various amendments were made to it, not only by the San Francisco Local but, I believe, the Portland Local and the New York Local. However, they were all ratified in turn by all the locals that were represented.

Q. When did you present it again?

A. The document was next presented later in the year. I believe it was presented about October—September 23rd.

Q. Who presented it?

A. It was prior to September 23rd; that was the deadline.

Q. Who presented it?

A. Mr. R. A. Pyle had written the membership of the point to point Mackay group, asking that we send Mr. O. M. Salisbury,
who had since been elected to the chairmanship of the San
91 Francisco Local——

Q. (Interrupting.) Who had been elected chairman previously?

A. Yes—asking us to send Mr. Salisbury to New York to aid him in negotiating this agreement, as Mr. Pyle was a marine man and didn't understand a great many things that would come up in the Mackay Radio point to point agreement.

Trial Examiner EICKHOFF. Is it agreeable to recess until 2 o'clock?

Mr. LIVINGSTON. Yes.

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. So ordered.

(Thereupon, at 12:55 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2:05 o'clock p. m., pursuant to the taking of recess.)

LON N. RONE, the witness on the stand at the time of the recess, resumed the stand and testified further as follows:

Trial Examiner EICKHOFF. I guess we are ready to proceed. Are you ready, Mr. Edises?

Mr. EDISES. Yes; I am ready.

Trial Examiner EICKHOFF. I might say now that, in as much
92 as we adjourned about an hour later than we had intended
to this morning, we shall probably adjourn half an hour earlier than we intended this afternoon—in other words, about 3:30.

You may proceed.

Mr. Reporter, will you read the last question and answer?

(The question and answer referred to were read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Well, now, what did the company say to this proposed agreement of yours?

A. I didn't finish this other agreement.

Mr. EDISES. Each time that you answer you might indicate the source of your knowledge or information.

Trial Examiner EICKHOFF. There was some matter—some preliminary matter that followed this last answer.

By Mr. EDISES:

Q. Did you send Mr. Salisbury to New York?

A. At this meeting Mr. Salisbury went before the membership and stated that he would not go to New York unless the membership would give him a vote of confidence to back him up no matter in what way the affairs went.

Q. What meeting are you referring to?

A. At the meeting where the letter of Mr. R. A. Pyle was read.

Q. What was done?

A. The membership voted to back up Mr. Salisbury if he
93 would go to New York to aid with negotiations of this agreement to the extent of striking if necessary to protect him.

Q. You say the date of that was the—When was the date of this meeting?

A. I don't know the date of the meeting, but it was in August or September—early September.

Trial Examiner EICKHOFF. The memorandum which you have, would it show the date of the meeting?

The WITNESS. I don't know; I just wrote—I don't know whether my memorandum would show it or not. I haven't the memorandum.

By Mr. EDISES:

Q. Did Mr. Salisbury then accept the appointment to go to New York?

A. Yes; he received a vote of the membership—a unanimous vote—that they would back him up.

Q. What instructions were given to Mr. Salisbury in regard to these negotiations in New York?

A. He was instructed—he was not to make any compromise without making any or all——

Q. Just a minute. When did he leave for New York?

A. When?

Q. Yes; when?

A. I believe in the first part of September.

Q. Now, was the marine branch of the ARTA likewise negotiating in the Mackay Radio Company for a national agreement at
94 the same time?

A. I don't believe—Do you know——

Mr. MERRICK. In the point to point division, if you ask him about the marine activities, will you ask him to disclose the source of his information?

Trial Examiner EICKHOFF. Do you know whether the marine group was negotiating; and if so, how do you know?

The WITNESS. As I stated, yes. Afterwards, at a conference between the committee—Mr. Stone, Mr. Rodman, and others—It was brought out that there was such a thing.

Trial Examiner EICKHOFF. That there were negotiations pending?

The WITNESS. At the time Mr. Salisbury went east, I did not know if there were any negotiations.

By Mr. EDISES:

Q. What was done in San Francisco to this agreement about the time that Mr. Salisbury was sent east?

A. After Mr. Salisbury was sent east, Mr. Stone came to the west coast.

Q. Approximately when?

A. Approximately September 11th or 12th.

Q. All right. Go ahead.

A. On September 13 I was advised by Mr. Leo Bash, who had been appointed by Mr. Salisbury, as secretary of the point to point Mackay local, that he had received word from the east that the marine
95 division were endeavoring to have Mackay sign a marine hiring contract similar to the one that had been signed by the RCA and the ARTA in the marine field. And that we were to have a meeting that evening with a view to taking joint action with the point to point group and the marine operators' group, and if such action carried we would submit both our contracts at the same time as joint action.

Q. Did you have such a meeting?

A. Later in the day, prior to that, Mr. Bash told me some time in the afternoon that he had been called into the office of Mr. Rodman. We have a rule in the union that no officer of the union can go into a meeting with any officer of the company when he is not accompanied by two or three men. He asked myself to go to this meeting, and he asked Mr. Palmer to come along. When we were relieved at four o'clock, we went in there—approximately 4:10.

Q. What was said, and do you know who was at this interview with Mr. Rodman?

A. Mr. Rodman and Mr. Stone, who was introduced as vice-president of the Mackay Radio (Mr. Tuel having died some time prior, in August) and Mr. Bash, Mr. Rathburn of the ARTA, Mr. Asplund, of the marine division of the ARTA, and another marine member were present. When we entered, Mr. Stone was introduced to us,

and stated to us when we were introduced, that it was all right for us to come in but he didn't want too many to come in. He wanted
96 us to observe what was going on between the marine negotiations and the Mackay Radio, and see that we got a fair deal. He contended to us in a short address that he had been caught with his pants down and had not been treated fairly and that he wanted us to go to our membership, and, as far as we could, word for word, tell his membership that the division had caught him with his pants down, and that he wasn't getting a fair deal.

Then he proceeded with the marine hiring agreement, which had been telegraphed from New York, he said, and he went through the agreement; and all through the agreement he made sundry remarks about "This gives us the right to hire scabs, and it gives us the right to break the agreement in the event that you won't furnish an operator, and all that." He said, "I can't see why you fellows would want an agreement like that."

However, Mr. Rathburn endeavored to get Mr. Stone to give him at least a verbal word that they would desist from hiring scabs and inefficient operators when there were plenty of ARTA union men with long experience available.

Q. Who is Mr. Rathburn?

A. He is local secretary of the ARTA.

Q. Go ahead. Was anything said at this meeting in regard to the point to point agreement?

A. After the marine agreement had been discussed with Mr. Rathburn, and the marine men had not obtained any satisfactory
97 word from Mr. Stone, Mr. Stone turned to us of the point to point group of the Mackay operating room of San Francisco, and said, "I am no son of a bitch; I was born in Oakland; I am a good fellow. All I want is time enough to get back to New York. I want you to go back before the membership and tell them just what position that I am in; that I will do anything I can for them when I get back if you will just give me a period of a few days."

Q. What was he asking you time for?

A. He contended that the marine branch had not given him sufficient time to study the document.

Q. He was asking for a period of time in which you were not to take certain action, is that correct?

A. Presumably; however, I can't connect that period. Mr. Stone knew all about our joint action that we had proposed although it was not a fact. He asked us not to take joint action until he had had an opportunity to get to New York.

Q. What joint action are you referring to?

A. I am referring to the joint action——

Trial Examiner EICKHOFF. In their wage agreement and hiring agreement.

By Mr. EDISES:

Q. You agreed to present to your organization Mr. Stone's proposition to give him a certain period of time?

98 A. No; we told Mr. Stone that we were only officers of the organization, but we would do as he asked, word for word, as well as we could place it before the membership just as he said. On this evening, the meeting was called and all the members who had been present at the meeting between the ARTA, and the officials of the company, gave their interpretation of what had occurred at that time. A vote was taken and the vote carried unanimously, I believe, that we were to take joint action with the marine division of the ARTA on the presentation of the Mackay point to point wage and working agreement with the marine division hiring agreement, and that we would grant to the officials of the Mackay Radio Company until September 23 to make a satisfactory agreement with us.

Q. What was the date of this meeting?

A. September——

Q. (Interrupting.) Wait a minute—I am referring to the conference with Mr. Stone. That was when?

A. September 13th.

Q. September 13. How much time did Mr. Stone ask for?

A. He asked for four or five days.

Q. At your meeting you agreed to give him until the 23rd?

A. Yes.

Q. That is more than four or five days.

A. Well, the entire membership felt that we should play fair as long as we could with the officials of the company.

Examination by Trial Examiner EICKHOFF:

99 Q. There were two things there: he asked you to hold off on any action for a couple of days; and you then in turn gave him until the 23rd to negotiate and consummate an agreement, didn't you?

A. Yes; but we didn't—I didn't finish that—to consummate the agreement with us, and after a period of time it was up to the judgment of our officers whether to continue negotiations or call a strike.

By Mr. EDISES:

Q. Was anything said about strike at this conference with Mr. Stone?

A. A great deal was said by Mr. Stone, but nothing said by us.

Q. Did he ask you not to strike until the expiration of this time he asked for?

Mr. LIVINGSTON. That is objected to. That is leading and suggestive, and puts words in the witness' mouth.

Trial Examiner EICKHOFF. Overruled.

By Mr. EDISES:

Q. Go ahead, tell what he said about the strike.

A. All through our discussion with him on the point to point phase, he said if we did decide not to give him the time, and to strike, that he would have to use whatever means and methods he could to upset us, and besides that he threatened he would close down the coastal circuits in any action taken against him.

100 Q. Did he say anything about what he would do if you did not take action?

A. Yes; he said he would go before the board of the I. T. T., and do everything he could to get us just wages and raise the standards to that of competing companies. He also said that he was a good fellow, and an operator at heart, and that we should be good fellows and give him a period of time in which to study this agreement, and not to strike.

Q. Now, what did your membership vote to do at the expiration of that period of time in the event your demands had not been met?

Mr. LIVINGSTON. You mean, Mr. Edises, at the meeting of September 13th?

Mr. EDISES. Referring now to the meeting of September 23.

Trial Examiner EICKHOFF. There was no meeting on September 23.

The WITNESS. That was the date of expiration of the time limit that the membership gave him before the officers were authorized to call a strike.

By Mr. EDISES:

Q. Then you testified that you took this statement of Mr. Stone's back to your membership and you held a meeting?

A. Yes.

Q. What did your membership vote to do at that time?

101 A. I have previously stated that the membership voted to take joint action with the marine division of the ARTA, and their hiring agreement, and contractual agreement—and a point to point wage and working agreement was to be submitted in joint action, and if one was to be signed the other had to be signed. We were to take joint boycott action.

Q. In the event that your demands were not met?

A. Were not met. They also, in the same amendment—in the same resolution, I believe it was the same resolution—it might have been a separate resolution—the membership voted to give Mr. Stone until September 23 to consummate the agreement, after which time our officers were authorized to call a strike.

Q. How many members of your local were present at that meeting?

A. I don't know—a great many; but everyone in the San Francisco office was given an opportunity to sign "Yes" or "No," whether the resolution was to carry. I believe everyone in the San Francisco office voted on it, and there were two or three that voted "No"—

one that I know of was silent—approximately 58 or 59 men voted "Yes" to strike.

Mr. LIVINGSTON. That was September 13?

Trial Examiner EICKHOFF. Yes.

By Mr. EDISES:

Q. Go ahead.

A. They voted in the event that the agreement had not been
102 arrived at by September 23——

Q. Who were those officers?

A. Mr. O. M. Salisbury had been sent by us for that purpose; Mr. R. A. Pyle, vice-president of the ARTA; and President Haddock, of the ARTA.

Q. What authority did you give Mr. Salisbury?

A. We gave Mr. Salisbury only the authority to discuss the agreement. We gave him no authority to change the agreement in any part.

Q. Did you give him authority to call a strike in the event that, in his judgment, it would be necessary?

A. We did.

Mr. LIVINGSTON. As I understand it, the other two are not members of this local at all.

Mr. EDISES. Which other two?

Mr. LIVINGSTON. The other two were not members of this local? The only one that was authorized to call a strike was Mr. Salisbury?

The WITNESS. Yes, sir. Mr. Salisbury, in conjunction with the two general officers, was entitled to call a strike if the agreement hadn't been executed, after September 23, but Mr. Salisbury alone was not entitled to call a strike.

By Mr. EDISES:

Q. Was he?

A. Well, the reading of the resolution, I believe, was "our
103 officers," which could be interpreted to mean that Mr. Salisbury, Vice-president Pyle, and President Haddock. However, Mr. Salisbury, being a point to point man and a fellow worker, we naturally placed the burden of responsibility on him whether or not to strike.

Q. Well, now, do you know what happened in connection with this authority which you had given Mr. Salisbury? What was the next development? In other words, the next development in the situation?

A. The next development was that I was working on Friday, October 4, and I was notified by telephone by Mr. Bash, who was then acting secretary, that the strike was voted by the New York Local of the Mackay Radio and the ARTA, for 3 o'clock a. m. Eastern Standard Time, or 12 midnight, October 4, Pacific Standard Time, and that Mr. Salisbury had advised that we go on strike at this time in conjunction with the New York local.

Q. Did your local pass its approval on the question? Did you vote on the question of whether or not to go on strike?

A. I was not there. It wouldn't have been necessary. We had already taken a strike vote on September 23, when all the signatures had been compiled.

Q. What happened then?

A. At twelve midnight I went on strike. That was midnight, October 4.

Q. How was Mr. Salisbury's decision communicated to the San Francisco Local?

104 A. I don't know; presumably by telegraph.

Q. You don't know?

A. No.

Q. How was the strike decision announced to the membership of the San Francisco Local?

A. I wasn't there.

Q. Do you know whether it was announced at a meeting?

A. I wasn't there.

Q. You say the San Francisco men walked out at what time?

A. Twelve midnight, October 4.

Trial Examiner EICKHOFF. You said you did. Did the rest of them, too?

The WITNESS. All the men in the office walked out.

By Mr. EDISES:

Q. How many?

A. Well, the entire night crew walked out. That is all I could say. There were perhaps one supervisor or——

Q. (Interrupting.) Were any men left working?

A. No; everyone walked out.

Q. No supervisors left?

A. The supervisors walked out, too.

Q. The strike was 100 per cent complete, then, was it?

A. Yes; at 12 midnight.

Q. Was a strike committee of any kind elected?

A. A strike committee was formed at the meeting. I later found out, however. I was not there; I couldn't tell you.

105 Q. Did you form a picket line?

A. Yes.

Q. Were any strike captains appointed or elected?

A. There was at the meeting; I wasn't at the meeting, though.

Q. Were you appointed a strike captain?

A. Yes.

Q. Who were the other strike captains?

A. Mr. Loudermilk, Mr. Bash, Mr. Palmer, myself, and there may have been more.

Mr. LIVINGSTON. What does that mean, "may have been more"? Will you kindly find out what he means?

The WITNESS. There may have been one or more strike captains appointed.

Mr. LIVINGSTON. Is there any way we can find out? Let's ask some of these other men. Do you know whether the men at Lobitos walked out?

The WITNESS. Yes; they walked out.

By Mr. EDISES:

Q. How about the men at the other stations?

A. The transmitters went off the air at 12 o'clock, the men walked out.

Q. Well, there are two other stations.

A. Yes; the receivers went out and the transmitters went out. For how long a period, I don't know.

Q. How about the Palo Alto group?

106 A. That's the transmitter.

Q. They walked out?

A. I believe there was only one man there.

Q. Was this picket maintained at all times during the strike?

A. To my knowledge, yes.

Q. Did you see Bash picketing?

A. Yes.

Q. Palmer?

A. Yes.

Q. Loudermilk?

A. Yes.

Q. Now, what was the next development of this situation, Mr. Rone?

A. We did picket duty all day Friday night, all day Saturday, and on Sunday there had been one man—a fellow by the name of Bill Kane, who went back to work—that was in the San Francisco division, who went back to work. Also, Supervisors Layman and Buckley had gone back to work. I don't believe that either one of them went on strike. Kane had gone on strike and went back to work. In the afternoon of Sunday, Supervisor Buckley came downstairs and asked the men on picket duty if they would let Bill Kane go home, that he was getting scary, and that he would be glad to join the organization and help us and aid us in the strike.

107 I told him, "Yes, we will not bother Bill, if he would come out," and I advised him to come out, too.

He said he didn't know, but that he would see. I told him that 6 o'clock might be too late.

Immediately after that, Bill Kane came out, and also a young man who was working as secretary, I believe, for Mr. Jorgensen, and a chief operator by the name of Spencer, announced his desire to come out and wanted to know if we would give him fair treatment, and aid us in picketing.

I left the picket line to have my dinner, and during the time I was having dinner Mr. Jorgensen and Buckley came out and announced——

Mr. MERRICK. I object. He can't know anything about that.

The WITNESS. They told me later.

Mr. MERRICK. Let us have the background.

Trial Examiner EICKHOFF. I think that would be better brought out on cross examination. He is telling the story here. I don't think he has to explain how he got his knowledge of everything he says before he says it.

Mr. MERRICK. You permit him to go ahead and testify as to what happened when he was not there?

Trial Examiner EICKHOFF. Subject to any cross examination you may care to go into. Proceed.

The WITNESS. While I was away Mr. Buckley and Mr.
108 Layman came out and told the pickets that they were through, that they wouldn't go back to work, and also another supervisor, Mr. Wilson, said they would not go back to work.

Mr. MERRICK. I move to strike that testimony.

Trial Examiner EICKHOFF. How did you gain your knowledge of this?

The WITNESS. From the pickets, and later I talked to the supervisors.

Trial Examiner EICKHOFF. You talked to the company men?

The WITNESS. Yes.

Trial Examiner EICKHOFF. They both told you that?

The WITNESS. Yes.

Mr. LIVINGSTON. May I ask what is meant by "company representative"?

The WITNESS. Mr. Layman and Mr. Buckley.

Mr. LIVINGSTON. They are not company representatives.

Mr. EDISES. I suggest, to facilitate matters, a lot of these things be cleared up on cross examination. He is telling a pretty good story.

Trial Examiner EICKHOFF. I don't want him to go too far afield on things that might be important. The incidental matters, I don't care so much about.

By Mr. EDISES:

Q. Mr. Rone, what is a supervisor? What is his function, his position? Is a supervisor's function——

109 A. His title describes him—he supervises the traffic, the employees; he is designated at a meeting between the committee and Mr. Tuel's own officer of the company. He expressed the wish that they not be included with the ARTA because they were considered officials of the company.

Q. Who expressed that wish?

A. Mr. Tuel.

Q. When and where?

A. At a meeting we held with him when we obtained the raise.

Q. He said that supervisors were officials of the company?

A. Yes; he said they shouldn't belong to the rest.

Examination by Trial Examiner EICKHOFF:

Q. Let's nail this right down now. There were two men who were not on strike and who communicated with your pickets, is that correct?

A. Yes.

By Trial Examiner EICKHOFF:

Q. The names of those two men were—the names of the two men who came out as supervisors were Layman and Buckley. They were not on strike?

A. No; they were not members of the organization, and also Wilson, who was also a supervisor.

Q. What were their positions with the company?

A. Supervisors.

Mr. LIVINGSTON. I would like to say very briefly that
110 we don't think that congress intended, by saying that the ordinary common law rules of evidence do not apply to this type of case—I say, I don't think that congress intended to say that this type of proceeding, which involves the business of the people, can be run on the basis of common, ordinary hearsay, and I say also that if congress did so intend, it is very doubtful in my mind if congress has the power to hold anything on hearsay testimony.

Trial Examiner EICKHOFF. I didn't consider this common, ordinary hearsay, and where two men who were not on strike told him certain things——

Mr. LIVINGSTON. If the Examiner will permit me, with all due deference to the Examiner, I completely disagree with the Examiner's statement about common, ordinary hearsay; when somebody who is not authorized by his company to make admissions on his part, or to make statements on his part, is quoted by a witness as having said something—that is not anything other than hearsay.

Trial Examiner EICKHOFF. This hasn't been tied in to the company yet, Mr. Livingston.

Mr. LIVINGSTON. That is what I am objecting to. There has been testimony that somebody else told him something that occurred at some other time. That is susceptible of proof by some other men, and not by what somebody told the witness; and I suggest, with
111 the utmost deference to the Examiner, that that is not a proper way to prove facts under any law, and under any statute before this tribunal, and it is susceptible of proof because the witnesses are here to prove.

It is very difficult to try a case where the witness is permitted to say that "somebody told me so and so," and I think it comes very close to an impingement upon constitutional rights in that regard.

Trial Examiner EICKHOFF. If the other party is here and can give that testimony, we will not get it from Mr. Rone.

Mr. EDISES. He has testified as to the nature of the supervisors' work. He testified to an admission by Mr. Stone or Mr. Tuel——

The WITNESS. Mr. Tuel.

Mr. EDISES. (Continuing.) That supervisors were company officials. We may possibly contend that they were—We may possibly contend there that they would be authorized.

Trial Examiner EICKHOFF. I haven't any objection to that part of it but I think if the men are here themselves I'd perfer that they give the testimony.

Mr. EDISES. It is perfectly O. K. I don't know that that is particularly important anyway.

Trial Examiner EICKHOFF. Proceed.

By Mr. EDISES:

Q. Go ahead with your account of what happened during
112 this period about which you were talking. Confine yourself as much as possible to your own observations.

Mr. LIVINGSTON. To save time will it be understood that that objection I just made will run to any hearsay testimony, irrespective of the fact that the statute says that common law rules of evidence are not binding in this tribunal. I want it understood that we take the position that that does not permit congress, or anyone else, to provide hearsay testimony in this type of hearing.

Trial Examiner EICKHOFF. Your objection is noted.

The WITNESS. When I heard the three supervisors come out I asked Mr. Phelps and Mr. Clifford, both employees of Mackay Radio, if they would go with me to Alameda to see if these men wouldn't sign up.

By Mr. EDISES:

Q. With what?

A. ARTA.

Trial Examiner EICKHOFF. Which men?

The WITNESS. Layman and Buckley.

Trial Examiner EICKHOFF. These are the two supervisors?

The WITNESS. Yes. We went to Mr. Layman's home. He was not at home, but we located him at a friend's home.

By Mr. EDISES:

Q. Who went with you?

A. Phelps and Clifford, employees of the Mackay Radio, and members of the ARTA. We located Mr. Layman at a friend's
113 home and he came out to talk to us. After some discussion he agreed to sign up with the ARTA and made the remark, "I walked right through your pickets down there and not one of them stopped us."

Then he drove us to Mr. Buckley's home, and he was very enthusiastic about signing up. As soon as he signed up we returned to San Francisco. That was on Sunday; on Monday, I don't recall any special incident other than——

Q. Just a moment. During the period that you have been testifying about did you have any contact—personal contact—with any of the company officials?

A. I spoke to Mr. Rodman on the sidewalk in front of the building while I was on picket duty. I believe I spoke to him two or three times.

Q. What was said?

A. Well, just a discussion of the general conditions of the strike. Mr. Rodman contended that we had made a serious mistake, and that all our men in New York had gone back on us, that we couldn't win. I believe that was about all that was said.

Q. Did any of your men go up into the office during the strike and have contact with the company officials?

A. With the exception of one man, I don't know of anything; that was a Mr. Spanover.

Q. How did he happen to do that?

114 A. He was a fence-rider. He wouldn't join the organization. He had some type of document, he said; his eyes were bad. He wouldn't work. He made various trips to talk with the officials of the company, and he is supposed to have carried tales from both sides.

At that time Mr. Buckley had come out to intercede for Bill Kane to see if he could come out and quit work. We also told Spanover he could either go in and work or join the organization.

Q. What did he do?

A. He joined the organization and, at the end—That was on Sunday—and on Monday Mr. Spanover did practically everything in his power circulating among the men to create dissension.

Mr. LIVINGSTON. That is objectionable on the ground that it is calling for a conclusion of the witness. Let him say what he said or did.

By Mr. EDISES:

Q. Yes; what did Spanover say or do?

A. He said, for one thing, that there were 23 scabs flying from New York.

Trial Examiner EICKHOFF. He said this to you?

The WITNESS. In my hearing, to me; yes. He said that there were already 16 men working in the operating room. He said that there was no chance of winning the strike and that we should form

115 a small committee and go up to see Mr. Rodman to see if he wouldn't take us all back to work, totally disregarding the rest of the men in the entire system. He said that to me, and I told him to leave the picket line and stay away from the picket line.

By Mr. EDISES:

Q. Did any men come in to fill your jobs while you were on strike?

A. Yes; there were some scabs flown here from Los Angeles to fill our jobs.

Q. When did they arrive?

A. I believe that they arrived Saturday morning.

Q. How many were they?

A. I don't know definitely—over four.

Q. Over four?

A. No; including the chief operator of Los Angeles.

Q. Any men come from any place else during the strike to take your jobs?

A. Yes. There were nine scabs flew here from New York, and two or three scabs from Chicago. They flew to San Francisco or came by train.

Q. When did they arrive?

A. The nine scabs from New York, I believe arrived Tuesday morning.

Q. Well, did anything happen on Monday, October 7th? Did you have a meeting in the morning?

A. There was a meeting in the morning, but I was on the
116 picket line during that time.

Q. What else happened Monday?

A. There was a great deal of action on the part of Mr. Spanover to break the morale of the men.

Mr. LIVINGSTON. Same objection. Same motion; same grounds.

Trial Examiner EICKHOFF. Just a moment. You don't contend that Mr. Spanover at that time was working for the company in any way, do you?

The WITNESS. It looks like that from here, after this period of time.

Trial Examiner EICKHOFF. Can you establish that? Because unless you can tie Mr. Spanover into the company in some way, what he may have done, he might have been a traitor in their ranks without having any connection with the company.

By Mr. EDISES:

Q. What did Mr. Spanover say or do that you base your statement on?

A. My previous statement, that he wanted a small committee to dash up and see Mr. Rodman and see if he wouldn't take all the San Francisco men back, totally disregarding the entire Mackay system that was out on strike, that we were to bolt back to work.

Mr. LIVINGSTON. May I object? Our motion still stands.

117 Trial Examiner EICKHOFF. That might be stricken until and unless you can establish a connection between Mr. Spanover and the company.

Mr. EDISES. May that remain in then, on condition that it subsequently be connected up with some company activities?

Trial Examiner EICKHOFF. I'll change my ruling if you later establish that Spanover represented the company.

Mr. EDISES. Then this testimony may remain in?

Trial Examiner EICKHOFF. I'll change my ruling later.

Mr. LIVINGSTON. The testimony is out, then?

Trial Examiner EICKHOFF. For the time being; yes.

By Mr. EDISES:

Q. What else happened on Monday, Mr. Rone; Monday, October 7th?

A. On Monday, October 7th, I did picket duty from approximately 10 o'clock in the morning to approximately 3:00 or 3:30 in the afternoon. I went over to the union hall at 52 California street and found an informal collection or gathering being talked to by a supervisor by the name of McLaughlin, the office electrician Robert Hatch, and Spanover. Mr. McLaughlin was quoting from some written sheet that a number of men in New York had returned to their jobs. I believe the statement was, 84 men had returned to their jobs in New York, that no one had gone on strike in Seattle, and that Portland had gone back 70 or 80 per cent, and that we should form a committee and go to see Mr. Rodman and see if he wouldn't take us all back.

118 I asked Mr. McLaughlin what he was quoting from and he said "A telegram."

I said, "Well, who signed the telegram?"

He wouldn't say. Then Mr. Spanover got up and made practically the same statements, still quoting from this piece of paper, and a Mr. Hatch joined with him in pleading for the men to all join together and ask for our jobs back.

I told the men that we would be foolish to make any bolt of it. If there was any desire of the men to go back we should hold a regular meeting and we should take a vote of it, and our locals should be advised of the results. Then, we would negotiate for the purpose of going back to work. It was an informal hearing. It seemed to meet approval.

I asked an operator by the name of Barlow, "Where did you get this information?"

"Well," he said, "It is a sheet of paper from the Mackay Radio & Telegraph Company with their heading, signed by Mr. Watkins, who is—" I don't know what his title is, but he is in charge of the Lobitos station, where the tuning and marine work is done. On that page were several allegations that we were being misled by our officers in New York, that we had not been informed that Seattle had not gone on strike, that the majority of men had gone back to work in Portland, that there was a number of scabs en route that we didn't know about.

119 Q. Did you receive any word from New York as to what the situation actually was in New York?

A. Yes; we had telegrams throughout the entire space. They were posted on the bulletin board.

Q. Were all communications which were sent from New York posted on the bulletin board at the union headquarters?

A. Yes; I saw them all.

Trial Examiner EICKHOFF. Who sent those telegrams?

The WITNESS. They were sent by Mr. William James and by Mr. Pyle.

Trial Examiner EICKHOFF. They were addressed to whom?

The WITNESS. To the point to point membership, to the secretary, Mr. Bash.

By Mr. EDISES:

Q. Did they contain information which was different from that given you by these other men?

A. Substantially.

Mr. LIVINGSTON. That is objected to on the ground, first, that it is hearsay, and, second, that the telegrams themselves are the best evidence. Certainly we are not bound by what somebody telegraphed from New York to San Francisco, nor are we bound by the fact that the witness says that he saw the telegrams.

Mr. EDISES. We are not trying to bind you.

Mr. MERRICK. There is no connection. It all depends on how far we are going.

120 Trial Examiner EICKHOFF. Both you gentlemen know we can't do everything at once.

Mr. LIVINGSTON. We both wish to know how far you are going to divert from the normal methods of trial procedure. He has got to establish some kind of a connection between these messages and what the issue is here. There is no connection so far suggested as to what he is going to do with it.

Trial Examiner EICKHOFF. Overruled.

By Mr. EDISES:

Q. What was the difference between the statements made by McLaughlin and the information that you received in the telegram?

Mr. LIVINGSTON. We object to that. We object to the witness testifying as to the differences.

Trial Examiner EICKHOFF. Overruled.

By Mr. EDISES:

Q. What did the telegram state?

Mr. LIVINGSTON. That has been objected to.

Trial Examiner EICKHOFF. The objection is overruled.

Mr. LIVINGSTON. I'll keep on objecting.

Trial Examiner EICKHOFF. One objection to one question is sufficient. Furthermore, there is a stipulation that your objections to all this line of questioning—the stipulation is in the record, so it is not necessary to interrupt with these questions.

121 The WITNESS. I would like to ask our secretary, Mr. William Salisbury, if he would not give me the telegrams.

Mr. EDISES. Have you the telegrams, Mr. Salisbury?

Mr. SALISBURY. Not with me.

Mr. EDISES. Can you get those telegrams?

Mr. SALISBURY. Yes; they are on file.

Mr. EDISES. Will you let us have them here? We can introduce them in the morning.

The WITNESS. I should also like to ask Mr. Salisbury to introduce the letter that was being quoted from by Mr. McLaughlin, Mr. Spanover, and Mr. Hatch.

Mr. EDISES. Those letters are in your files, are they, Mr. Salisbury?

Mr. SALISBURY. Yes.

Trial Examiner EICKHOFF. Then, we'll pass on to something else.

By Mr. EDISES:

Q. Now, will you answer the question: Do you remember what was in those telegrams?

Trial Examiner EICKHOFF. We will pass on to something else. The telegrams themselves would be the best evidence.

By Mr. EDISES:

Q. Now, what else took place at the meeting on October 7, Mr. Rone?

A. When Mr. McLaughlin permitted the membership to see who had signed that, and on what letterhead it had been written, the membership all laughed at him and said, "Naturally, they would put out such propaganda." The meeting broke up.

122 Q. Was there any action taken, or was there any discussion other than this you have just referred to, in regard to whether or not you ought to continue to strike or end the strike?

A. Yes; the gathering was there—it was not a meeting—they agreed, "Let's go back to the picket line and stay on strike."

However, later in that evening Mr. Loudermilk arranged for Mr. Salisbury, who was in New York, to get the exact facts and figures as to what was going on in New York, for the purpose of the membership, and also discussed the advisability of making some overtures to the company to get the entire membership back. There was nothing said as to whether we would go back or not. Just the advisability of the procedure to be followed.

Q. What time was the telephone call?

A. Late in the evening, I believe—nine or ten at night.

Q. Were you present when it was made?

A. Yes.

Q. What did you hear?

Mr. LIVINGSTON. Objected to as hearsay.

The WITNESS. I only heard one side of the conversation.

Trial Examiner EICKHOFF. Do you wish a ruling on your objection, Mr. Livingston?

123 Mr. EDISES. Did you sustain his objection, Mr. Examiner?

Trial Examiner EICKHOFF. I just asked Mr. Livingston if he wanted a ruling.

Mr. LIVINGSTON. I withdraw my objection. I would like the record to show that the parties to that conversation are in the courtroom; then I'll make my objection. I want the record to show that, and then I'll make my objection on the ground that whatever is said is hearsay and should not be introduced through this witness.

Trial Examiner EICKHOFF. You want the question or answer read?

Mr. LIVINGSTON. I am objecting to a question as to what was said on the telephone by a gentleman who was telephoning to New York. I think Mr. Loudermilk telephoned Mr. Salisbury. The gentleman on the stand was in the room when the telephone conversation took place. I would like to have the record show that both Mr. Loudermilk and Mr. Salisbury are here, and with that record before me I would like to object to any question concerning this telephone conversation.

Trial Examiner EICKHOFF. You were not in this telephone conversation?

The WITNESS. No.

Mr. LIVINGSTON. It seems to me that anything this man heard himself is certainly irrelevant.

124 Mr. EDISES. He said he was present. He heard one end of the conversation. The fact that he didn't hear the conversation doesn't bar the fact that he did hear what was on the other end.

Trial Examiner EICKHOFF. The objection is sustained. You have someone here who heard both ends of it?

Mr. EDISES. No.

Trial Examiner EICKHOFF. Then the objection is sustained.

Mr. EDISES. I'd like to get this telephone conversation into the record. I think I am going to ask Mr. Loudermilk to take the stand to testify to this telephone conversation, because chronologically that should be in the evidence in order to give a clear picture. May I have Mr. Loudermilk testify as to what went on in this telephone conversation?

Trial Examiner EICKHOFF. He will be back later?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. Yes, if you will step down.

The WITNESS. All right.

(Witness temporarily excused.)

ALONZO B. LOUDERMILK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

125 Direct examination by Mr. EDISES:

Trial Examiner EICKHOFF. Let us have his name.

By Mr. EDISES:

Q. What is your full name?
A. Alonzo B. Loudermilk.
Q. And your address?
A. 722 Taylor street.
Q. You are a member of the union?
A. I beg your pardon?
Q. You are a member of the ARTA?
A. I am.

Q. And you are one of the persons named in this complaint as having been refused re-employment?

A. I am.

Q. Were you present about 9 o'clock p. m. on the evening of October 7th at the ARTA hall in San Francisco, and did you engage in a telephone conversation with Mr. Salisbury and Mr. Pyle at New York?

A. I did.

Q. Will you tell us what was the substance of that conversation?

Mr. LIVINGSTON. That is objected to as hearsay and not intended to prove any issue of the case.

Trial Examiner EICKHOFF. Overruled.

126 A. I spoke directly to Mr. Salisbury and I requested him to give me a clear, concise statement as to the conditions in New York in regard to the strike.

Mr. MERRICK. Before he continues, I think we ought to have it noted what the purpose is of offering this testimony. Is it to prove the facts in New York, or to show what these people here in San Francisco thought were the facts, which would have some bearing on what they did subsequently? For which purpose is it offered?

Mr. EDISES. It seems to me we are trying to get the whole story. We want to know exactly what was said and done, and bring out all the relevant facts. This conversation is perfectly material. That will be evident from what Mr. Londermilk is about to say.

Trial Examiner EICKHOFF. It may be shown (I can conceive that it might be, although I am not saying that it will be) that there was some misrepresentation here, whether the misrepresentation on this end will ever be coupled up I don't know, but I am going to hear, and when we are all through, why some of these bits of evidence which may not seem to be particularly relevant at the moment, may allow myself, or any other body, to arrive at certain reasonable conclusions. Your objection is overruled.

Mr. MERRICK. I would like to know whether you are admitting it for one or both purposes? You are aware that the power of the

127 court to admit the testimony for one purpose may also exclude it for another. This is obviously not proper testimony as to the facts. If there is any reason why the information that these people received here over this telephone conversation is important, and it is shown what was in their minds, why then it may be that it is admissible for that purpose. But I think it is the proper thing for the Examiner to rule as to which of the two, or whether it is both of the purposes which this testimony is being admitted.

Trial Examiner EICKHOFF. I am merely admitting it at this time without specifying the purpose. That may appear later.

Mr. MERRICK. You put opposing counsel in a very impossible situation. We don't know whether to have to introduce testimony as to the facts, thinking that you are taking these things as important facts in the case, as to what happened in New York, or whether for other purposes. Unless you enlighten us we may have to——

Trial Examiner EICKHOFF. After this evidence has gone in you may move to strike it, and I'll have reserved decision, and later on if it has been found not to be material or substantiated, a motion to strike may be granted.

Mr. EDISES. All this depends on the testimony, for which purpose it is submitted.

Trial Examiner EICKHOFF. I give Mr. Edesis opportunity to
128 use this later, if you can. If you can't, it will go out.

Mr. EDISES. Proceed, Mr. Loudermilk.

The WITNESS. I asked for a clear statement of the case and the conditions that existed in New York as Mr. Salisbury saw them. He told me that the men in the New York area and the receiver stations and the transmitter stations and the marine stations were out on strike 100 per cent. But there had been quite a number of men who worked in the New York downtown office of Mackay Radio who had gone back to work. There were approximately 14 men who are staying out on strike from the downtown office of the Mackay.

Mr. LIVINGSTON. Pardon me; are you finished with the telephone conversation?

Mr. EDISES. No; I am not.

Q. Was anything said about calling off the strike?

A. I am getting to that.

Q. All right; proceed.

A. I told him in view of the alarm that some of the members here had taken and the feeling that they were not being supported 100 per cent from the east coast as they had expected to be, that it looked to me as though some move should be made on the part of our officers to talk to Mr. Stone at the first opportunity in New York and to find out if matters could not be terminated on a satisfactory basis where all men would go back to work immediately and
129 our negotiations would be continued. I had advised him to do this. I thought that it was necessary that we do it.

Q. Anything further said in that conversation?

A. Naturally, that is the gist of this conversation. The conclusion was that the agreement—that Mr. Salisbury and Mr. Pyle agreed to go before Mr. Stone the first thing on the morning of the 8th and present to him a desire to continue our arbitration and to call the strike off immediately provided our men could go back to work without discrimination.

Q. Was there anything further said, Mr. Loudermilk, during the conversation?

A. I don't recall anything else pertinent at the present time.

Mr. LIVINGSTON. Will the Examiner permit me to make this record. We think it ought to be made.

Trial Examiner EICKHOFF. Certainly.

Mr. LIVINGSTON. We object to this on the ground that it is incompetent, irrelevant, and immaterial, and not tending to prove any

issue of the case. Second, we move that the testimony, if admitted, be permitted solely to prove that the conversation took place, and not be admitted for the purpose of proving anything which had or had not taken place in New York, on the ground it is not the proper way to prove any facts.

130 Trial Examiner EICKHOFF. Your first motion is denied, and your second is granted.

Mr. EDISES. All I wanted to know is whether or not the men were misinformed. In other words, misinformed by their leaders.

Q. Now, Mr. Loudermilk, was this conversation with New York reported to the men?

A. There were at least a dozen men in attendance at the time the conversation took place. They were standing within two, three, or four feet of me, and heard every word that I said, at least.

Q. Did you give them an account of what was said from the other side?

A. Immediately that the conversation was terminated I told them as best I could.

Q. You did not conceal anything? You told the men exactly what was told you about the New York situation?

A. I did. I had no reason to conceal anything.

Q. Was Mr. Hatch present when this conversation took place?

A. He was.

Q. Was Mr. Burtz present?

A. I don't remember.

Q. Was Mr. McLaughlin present?

A. I don't remember.

Q. Did you see Hatch, Burtz, or McLaughlin around the

131 union hall at any time Monday, October 7th?

A. Oh, yes.

Q. Did Hatch participate in decisions that day?

A. Yes.

Q. Burtz?

A. Oh, yes.

Q. McLaughlin?

A. Yes. I was trying to recall when I heard McLaughlin talk; I remember now.

Q. Were all telegrams received from New York that day posted on the bulletin board?

A. They were, to the best of my knowledge.

Q. To the best of your knowledge, was all the information you received in regard to the New York situation made public so that the men could know about it?

A. All that I personally received was made public to everyone.

Trial Examiner EICKHOFF. Mr. Edises, do you think it is necessary to go to such an extent into the internal affairs of the organization?

Mr. EDISES. I think it will be demonstrated later, Mr. Examiner, that it is extremely relevant, extremely important that this particular

fact be emphasized—that nothing was concealed from the men whatever.

132 Trial Examiner EICKHOFF. Yes; they are talking now about their own people.

Mr. EDISES. Yes; that is just the point. It will be demonstrated later that they were accused of having misinformed the men, concealed certain information from the men. I believe your Honor will concede that this whole matter will be connected up and will be extremely important.

Trial Examiner EICKHOFF. All right.

Mr. EDISES. That will be all for the present, Mr. Loudermilk. Do you want to ask him any questions?

Mr. MERRICK. May we reserve the right to cross examine later not only on the testimony he gives subsequently but on this testimony given now?

Trial Examiner EICKHOFF. Well, I think now would be the logical time to cross examine him on this.

Mr. MERRICK. I thought we could allow him to complete his case. I understand that was the reason he wanted to interrupt the usual method of procedure instead of completing one witness before calling another, put him on temporarily. Counsel wasn't consulted as to their wishes in the matter. I think that since that was done for the purpose of allowing the Board's case to be put in full. If I may, I prefer to withhold cross examination.

Trial Examiner EICKHOFF. You prefer to cross examine after Mr. Rone? That will be agreeable.

133 Mr. EDISES. It is perfectly agreeable with me. It is all right with me.

O. K. Mr. Loudermilk, that is all. Thank you.

(Witness excused.)

LON N. RONE, the witness on the stand previously, resumed the stand and testified further, as follows:

Direct examination by Mr. EDISES:

Q. When did you leave the ARTA union hall on Monday, October 7th?

A. Somewhere around 11 or 11:30 p. m.

Q. When you left the hall, what was the situation? Had any definite action been taken by the men in regard to ending the strike?

A. No action had been taken by the men. The last that I heard of breaking up the strike was in the meeting that afternoon when the men said, "Let's go back on strike. That's propaganda."

Q. So that when the meeting ended, the strike was still in existence, and the men had not voted to end the strike; is that correct?

A. That is correct.

Q. Did you see Mr. Hatch and Mr. Burtz at that meeting during the day?

A. I saw Mr. Hatch that—You mean at four o'clock, or later in the evening?

Q. At any time on Monday?

A. Yes; I saw both of them throughout the day.

134 Q. Did you see them consulting together?

A. I saw them consulting together for half an hour out in the hall at the ARTA.

Q. When you left at 11:30, do you know whether Hatch was still present?

A. No, I don't.

Q. Or Burtz?

A. No, I don't.

Q. What was the next development that you know of?

Examination by Trial Examiner EICKHOFF:

Q. Just a minute before we leave that evening meeting. This telephone conversation took place during an evening meeting?

A. There was no meeting—it was just groups standing around waiting developments of the conversation between Mr. Loudermilk and Mr. Salisbury in New York. There were 12 or 15 men present, although there was no meeting in progress.

Q. At that time was there any idea of going back to work or arbitrating under discussion, or decided upon?

A. The last that had been expressed by the membership in San Francisco that I heard was at the meeting referred to, around four o'clock. The next I heard was when Mr. Loudermilk said to Mr. Salisbury, that they confer with the officials of the Mackay Radio to see if our men could go back.

135 Q. That proposition had not been acted upon in the meeting?

A. No.

Q. Was that just a feeler?

A. Mr. Loudermilk had stated to me that he would confer with Mr. Salisbury to see what it looked like, and then we would take it up at the meeting at 10 a. m. Tuesday.

Q. Did Mr. Salisbury and these other figures have the authority to call off the strike?

A. Mr. Salisbury, according to the resolution, voted upon, had the authority to call a strike, but he had no authority to call off the strike, other than by vote of the membership.

By Mr. EDISES:

Q. Did you—are you through, Mr. Examiner?

Trial Examiner EICKHOFF. I think so.

By Mr EDISES:

Q. Did the membership employ Mr. Loudermilk to order Salisbury to negotiate with Mr. Stone in regard to getting these men back to work?

A. Not that I know of; I wasn't present.

Q. Where did he get his authority to tell Stone to do that?

Trial Examiner EICKHOFF. Salisbury.

By Mr. EDISES:

Q. To tell Salisbury to do that?

Trial Examiner EICKHOFF. The witness has said he doesn't know—he doesn't know anything about that.

By Mr. EDISES:

Q. O. K. Very well. What did you do after you left the meeting?

136 A. I went home and went to bed at approximately 11:30 or 12 o'clock. I returned to the union hall the next morning between 6 and 6:30. The hall was locked. No one was around there. I was greatly bewildered as to what had happened. I went over to the picket lines, but there was no one on the picket lines.

After a while, Mr. McLaughlin came down and told me that the men had all had a meeting at the Bellevue Hotel. I asked him why I wasn't notified. He didn't know.

I said, "What is the result of this?" He said, "You are on the shit-list. There are 11 men who can't go back to work."

I said, "Do you mean we are fired for union activities?" He said, "What do you think?"

So, I went home; I had been up late the night before, and I went home and rested a while and went back to union headquarters. I could find no one in authority as Mr. Rathburn was ill. I inquired around about conditions and I found that the men at the transmitters and receivers of the San Francisco district were still on strike, that the men in New York were still at work.

Q. How did you find that out?

A. From the clerk at the ARTA.

Mr. LIVINGSTON. We ask that that testimony be limited as to what he found out—the same motion we made before.

137 Trial Examiner EICKHOFF. That is satisfactory.

By Mr. EDISES:

Q. Tell us what you know of your own knowledge.

Trial Examiner EICKHOFF. Tell us the results of your investigation, where the information came from.

The WITNESS. Mr. Brown, of the ARTA, told me that these points, Palo Alto and Lobitos, were still on strike, that Portland was still on strike, or a great number—a great percentage of the men were still on strike in Portland—that the men at the receivers and transmitters in New York were still on strike, or a majority of them. I didn't know what to do, as I couldn't contact anybody in authority, so I went home and stayed away from the hall until the next morning. I contacted Mr. Rathburn, secretary of the ARTA here in San Francisco, and he confirmed the fact that these men were still on strike.

I told him that, being an officer of the organization, I didn't think I should endeavor to go back to work until such time as the other men went back to work. It is a system agreement, and I had already been told by an officer of the Mackay Radio Company that I was on the shit-list, and I wasn't going to be allowed to return to work.

Mr. LIVINGSTON. We move to strike out any statements made by Mr. McLaughlin to the witness until they are connected with
138 the company, until counsel will promise to connect those statements with the company. If there is any connection to come in later I think counsel should so indicate.

Trial Examiner EICKHOFF. Wasn't he a supervisor working for the company?

Mr. MERRICK. That's the point. He shouldn't be allowed to characterize.

Trial Examiner EICKHOFF. That didn't mean he was an officer of the corporation, or an official.

Mr. MERRICK. There is no reason why this witness should be allowed to characterize anybody in that way.

Trial Examiner EICKHOFF. He has called him a supervisor.

Mr. MERRICK. If he says "supervisor" all right.

Mr. LIVINGSTON. May it be stipulated that any other description of Mr. McLaughlin as supervisor be stricken?

By Mr. EDESIS:

Q. My understanding was that he referred to Mr. McLaughlin as a supervisor all the way along. Hereafter, will you refer to Mr. McLaughlin as supervisor?

Mr. LIVINGSTON. I shall ask the examiner to ask counsel for the Board if he will connect Mr. McLaughlin's statements with the company, or whether he intends to stand upon this record as making Mr. McLaughlin's statements admissible.

Mr. EDISES. What particular statements do you have reference to?

Examination by Trial Examiner EICKHOFF:

139 Q. Mr. Rone, will you tell us everything you know about the connection of Mr. McLaughlin with the company, his capacity, his title, his duties, what he customarily did, so far as you observed, and so on?

A. He was promoted to supervisor from operator, at the insistence of the membership of the organization. He became a supervisor, and immediately lost interest in union work.

Q. Never mind that. What were his duties in the company as supervisor?

A. His duties were to supervise transmission of traffic, to supervise the places and points that men worked, to naturally report any inefficiency or violation of rules, and he was at times in charge of the entire operating room.

Q. Did he have the power to hire and fire men under him?

A. I don't think so.

Q. You don't think so?

A. No, I don't think so.

By Mr. EDISES:

Q. Did he have charge of one circuit?

A. He had charge of the entire office sometimes during the night; at other times the office was split.

Q. Did he get higher pay than the men?

A. Yes.

Mr. LIVINGSTON. We submit he is no different from a supervisor in a telephone exchange.

140 Trial Examiner EICKHOFF. That isn't in evidence, either.

Mr. LIVINGSTON. And as such he isn't binding by any statements he may make—the company isn't bound. I would like to have the referee tell us whether he would require the Board to specify whether there is to be further evidence to connect the company with McLaughlin, or whether they are through.

Mr. EDISES. We are going to connect him with the company later.

Mr. LIVINGSTON. I'll ask the Examiner to state what the connection with McLaughlin and the company is. When evidence is let in on the face of the record improperly, it is proper for the court to state what steps will next be taken. If they have proved all they intend to prove we can speak now. If they intend to prove any more, they should be required to tell us so. The cards should be on the table.

Trial Examiner EICKHOFF. Mr. Edises, have you any testimony regarding Mr. McLaughlin's authority?

Mr. EDISES. I have, but I would like to get it in chronological order. In other words, there will be evidence brought in on Mr. McLaughlin's activities and his position with the company.

Mr. LIVINGSTON. I ask that there be a statement made at this time as to the nature of this evidence. That is not the kind of

141 testimony they can hold back on. They owe it to the court and counsel to state how they intend to connect this particular person up to the company in order to render his statements admissible——

Trial Examiner EICKHOFF. I think his position as supervisor makes his statements permissible.

Mr. MERRICK. I understand you are prepared to say that Mr. McLaughlin is an officer of the company, that his statements are binding on the company.

Trial Examiner EICKHOFF. What has been admitted concerning Mr. McLaughlin is justified by the fact that he is a supervisor of the company.

Mr. MERRICK. I don't know what you have in mind when you say "justified."

Trial Examiner EICKHOFF. I am not going to argue with you, Mr. Merrick. That is the ruling. If you care to state anything for the evidence, that is all right, but don't try to engage me in argument.

Mr. MERRICK. I am just trying to clarify your word "justify."

Trial Examiner EICKHOFF. The admission of the evidence is justified by the fact that Mr. McLaughlin was a supervisor or working for the respondent.

Mr. MERRICK. That is, you are admitting it as a statement made by a duly authorized representative of the company in the course
142 of his duty, and therefore binding on the company?

Trial Examiner EICKHOFF. I think I have made myself clear.

Mr. MERRICK. You decline to state whether you are admitting it on this basis.

Trial Examiner EICKHOFF. I am not telling you what I am inclined to do.

Mr. MERRICK. You mean, you are not stating for what purpose you are admitting the evidence?

Trial Examiner EICKHOFF. No.

Mr. MERRICK. Then I object to it in its entirety, and particularly that it is binding on the company.

Trial Examiner EICKHOFF. In case I haven't overruled that objection before, I do it now.

Will you proceed, Mr. Rone, with your story?

By Mr. EDISES:

Q. Let me ask you another question first. From the time you left the union hall about 11:30, Monday, October 7th, until the following morning—What was it, 7 o'clock?

A. Yes.

Q. Did you hear anything at all about calling off the strike, or did anyone tell you that the strike was to be called off?

A. No; I was not notified in any way.

Q. When you left the union hall the strike was officially
143 on still?

A. Yes.

Q. You mentioned a meeting at the Bellevue Hotel. Did you receive notice of that meeting?

A. No.

Q. When did you first hear about it?

A. Mr. McLaughlin told me.

Examination by Trial Examiner EICKHOFF:

Q. What was your capacity?

A. As a striker?

Q. In connection with your labor organization.

A. I was a member of the Administration Committee and also a strike captain.

By Mr. EDISES:

Q. Well, did you go up to the company on Tuesday, up to the Mackay office?

A. No. Tuesday—was that the 8th?

Q. That was the 8th.

A. I stuck around the ARTA hall, 52 California, awaiting word from the other locals, namely Portland and Lobitos and the east, to find out if they had voted to go back to work.

Q. Anyone tell you about the meeting at the Bellevue?

A. Well, I heard from various members of our organization what had transpired at the hotel, but I was not present.

Q. Well, what happened to you after that?

A. At three o'clock, Tuesday, I heard from Mr. Rathburn
144 that the Portland men had made an attempt to go back to work but had been locked out.

Mr. LIVINGSTON. We ask that that go out as hearsay.

Trial Examiner EICKHOFF. Overruled.

Mr. LIVINGSTON. We ask that it be unlimited as to fact what he heard but not as proof of what happened in Portland.

Trial Examiner EICKHOFF. Granted.

By Mr. EDISES:

Q. Go ahead.

A. I was also informed that the men at Lobitos and at Palo Alto had made an attempt to go back, and I was advised by Mr. Rathburn to make an attempt to go back. This I did. I went up to see Mr. Jorgensen, the chief operator.

Q. When did you see him?

A. Around 3:30, October 8th.

Q. Go ahead.

A. I asked him how about going to work, and he said, "Sorry; no chance." I said, "Well, am I fired?" He said, "No; you are not fired."

I said, "Well, if I don't get to work—if I didn't quit, and I wasn't fired, then I must be getting paid." He said, "No; you are not getting paid, but you are not fired."

"Well," I said, "I didn't quit." "No," he said, "You didn't quit."

145 "Well," I said, "Just what is my status?" He said, "Well, we don't have any vacancies. You will have to sign an application for re-employment."

I said, "Inasmuch as I haven't quit and I am not fired, how could I be re-employed?"

"Well, the best way for everyone here is to make the application, and you are not laying yourself out at all. Everyone makes it." I signed some type of written statement, stating that on this date I made application for re-employment as Class A operator.

Q. Did Mr. Jorgensen say that your case was different from the other men?

Mr. LIVINGSTON. That is objected to as leading and suggestive, and I ask the Examiner if he would admonish not to lead the witness.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Did Mr. Jorgensen say anything about your status?

A. He said that Mr. Jones had to pass on all applications.

Q. Did he say others applied for reinstatement?

A. Yes; he told me I was late in getting up there.

By Trial Examiner EICKHOFF:

Q. What other men?

A. He was referring to the black list.

Mr. MERRICK. How does he know what he was referring to?

A. This list that Mr. McLaughlin referred to—the shit-list—
146 was afterwards referred to me by Mr. Jorgensen as a black-list. It was originally 11 names on it, but a number of the men that were on it were re-employed immediately with the understanding that they would probably be released later.

Mr. LIVINGSTON. We ask that the testimony about "with the understanding" go out.

Trial Examiner EICKHOFF. The witness' conclusions may go out.

By Mr. EDISES:

Q. Go on, Mr. Rone.

A. The remaining five on the black-list were myself, Mr. Palmer, Mr. Loudermilk, Mr. Bash, Mr. Phelps.

Q. Did Mr. Jorgensen tell you that?

A. No; he only referred to Mr. Loudermilk and Mr. Palmer.

Mr. MERRICK. I move that be struck out. He hasn't seen the list.

Trial Examiner EICKHOFF. I don't know that any list existed.

Mr. MERRICK. You allow all this testimony about it?

Trial Examiner EICKHOFF. Well, it didn't have to be a written list. It was a discussion of a list——

Mr. MERRICK. He said that Mr. Jorgensen didn't tell him what was on it, but he gives five names—those names that were on the list—but what was the basis of his information?

Mr. EDISES. He testified that Mr. Jorgensen mentioned a list—a black-list.

147 By Mr. EDISES:

Q. Is that how he referred to it?

A. Yes.

Q. What did Mr. Jorgensen say about Mr. Palmer and Mr. Loudermilk?

A. He said, "They have already been in." He said, "I was wondering when you were coming in."

Q. Was that the first thing that was said—the first thing that came up?

A. He said, "Hello, Rone; I was wondering when you were coming in. Loudermilk and Palmer have already been in."

Q. What else did he say?

Mr. LIVINGSTON. We ask that the witness be instructed or requested to tell the conversation. That is the proper method of introducing conversation. Just tell what was said.

Trial Examiner EICKHOFF. I think you are right. I shall so instruct the witness.

By Mr. EDISES:

Q. Will you just tell what was said and done at that conversation?

Trial Examiner EICKHOFF. Relate the conversation with Mr. Jorgensen.

Mr. LIVINGSTON. Three-thirty, October 8th.

A. I walked in, and within a short period of time I saw him. He said, "Hello, Rone, I thought you wasn't coming in. Palmer and Loudermilk already have been in and made application." I
148 said, "Well, how about my job? Can I go to work?" He said, "No; I am sorry. You will have to make application." Then I asked him if I was fired for union activities and he said, "No."

I said, "Well, I didn't quit." He said, "No."

I said, "Well, just what is my status?" He said, "Well, you have to make application." Then, I asked him who was on this list and asked him about the men who were working in the office. He said that some of the men had been taken back temporarily; as far as he was concerned he would like to see us all back, he said.

He said that I would have to make this application; and I said, "If I haven't quit, and I wasn't fired, I didn't see any sense in making an application for re-employment." He said it wasn't binding on me in any way, I merely made an application, everyone in the organization had to do this. I said "O. K.," and made this application.

He told me that the application would first have to go to Captain Dodd, later to be O. K.'d by Mr. Stone.

I said, "How long should I expect to hear?" He said, "Call me up tomorrow."

I called him two times, and was informed that no action had been taken.

By Mr. EDISES:

Q. Just a moment. At this conversation, that you have just testified to, Mr. Jorgensen—Was anything said about your work
149 being satisfactory or unsatisfactory?

A. That question didn't arise at that time.

Examination by Trial Examiner EICKHOFF:

Q. What was Mr. Jorgensen's capacity?

A. He is chief operator in the H. B. operating room at Mackay Radio.

Q. Did he mention the list, or did you mention this so-called list, or did you mention it to him?

A. I mentioned it to him, inasmuch as I saw men whom I had been told were on the list. I saw them over there working. I asked them,

"How come you are working?" They said they were back working temporarily.

Q. Did he mention to you who was on this list?

A. No; he didn't mention them all, but I mentioned the several that were there working that I knew were on the list.

Q. Who was the first one who mentioned this so-called list to you?

A. Mr. McLaughlin.

Q. When and where did he mention it?

A. As I have already related——

Mr. LIVINGSTON. We object to the Examiner's question on the ground of his right to bind the company.

Trial Examiner EICKHOFF. Overruled.

Q. Did Mr. McLaughlin give you the names of certain employees who were on that list?

150 A. He gave me the names of all of them.

Q. Who were they?

Mr. LIVINGSTON. Same objection.

Trial Examiner EICKHOFF. Overruled.

A. He named myself, Mr. Loudermilk, Mr. Palmer, Mr. Bash. He stated that Mr. Salisbury would never be re-employed, it looked to him like that—and that a check-boy by the name of Dyer, an operator by the name of Patterson, and an operator by the name of Humphries.

Q. Did he mention Mr. Phelps?

A. There were eleven names. I don't recall the entire list.

Q. Was Mr. Phelps on the list?

A. Yes, on the list he quoted to me.

Mr. EDESIS. Are you through, Mr. Examiner?

Trial Examiner EICKHOFF. Yes.

By Mr. EDISES:

Q. Have you related the entire conversation you had with Mr. Jorgensen?

A. As much as I recall it.

Q. What was the next contact with the company officials?

Trial Examiner EICKHOFF. Just a moment; I think we will take an adjournment now until 10 o'clock a. m. tomorrow unless there is something special—some special reason to remain longer.

151 (Thereupon, at 4:00 o'clock p. m., the hearing in the above-entitled cause was adjourned until 10:00 o'clock a. m. Tuesday, December 3, 1935.)

152 [Title omitted]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Tuesday, December 3, 1935.

Met pursuant to adjournment at 10:00 o'clock a. m.

Trial Examiner EICKHOFF. You may proceed.

Mr. EDISES. I will ask Mr. Rone to take the stand again.

LON N. RONE, the witness on the stand at the time of adjournment, resumed the stand and further testified as follows:

153 Trial Examiner EICKHOFF. Mr. Reporter, will you read the last two or three questions and answers?

(The last three preceding questions and answers were read by the reporter aloud as above recorded.)

Mr. LIVINGSTON. With the permission of the Examiner we would like to make a motion with reference to Mr. McLaughlin's testimony, and make a very brief preliminary statement.

We have moved, on several occasions, depending upon the incident, to strike out the statement——

Trial Examiner EICKHOFF (interrupting). Mr. McLaughlin's testimony?

Mr. LIVINGSTON. I mean Mr. McLaughlin's statement as testified to.

We have moved on several occasions, depending upon the incidents, to strike out the witness' testimony of Mr. McLaughlin's statement, and those motions have been uniformly denied. Therefore, we will not renew those motions, but make this alternative motion without waiving the others:

That the testimony, if admitted, be admitted solely for the purpose of showing what occurred as between the witness and McLaughlin; that is to say, that McLaughlin made a statement to the witness, but not as evidence of anything done by the company, or as evidence of the truth of anything which McLaughlin is alleged to have said to the witness.

154 That is substantially the same motion as we made with respect to the other testimony as to which the Examiner granted our motion.

Trial Examiner EICKHOFF. Is that the motion?

Mr. LIVINGSTON. Yes, sir.

Mr. EDISES. I believe it would be advisable to permit the testimony to remain in for whatever it is worth. In other words, if subsequent testimony reveals that McLaughlin's position is such that none of his statements [illegible] binding upon the company, well and good. On the other hand, if the testimony should indicate that his position in the company was such that his statements are binding upon them, the Examiner is entitled to take cognizance of that fact.

Trial Examiner EICKHOFF. The motion is denied.

Mr. LIVINGSTON. While I am not going to ask the Examiner to indicate the basis for his ruling, it would be helpful, to save time, if the Examiner takes the position, or is of the view that there is now a prima facie showing of authority, then we can stop on that subject.

Trial Examiner EICKHOFF. I think that Mr. McLaughlin's statements, as testified to, are pertinent now because of his relationship to the company as an employee. Perhaps it is a part of the res gestae, what they may be worth in view of later testimony by reason of the fact that they may later be connected up with the company. What weight they will have later will depend upon what other testimony may be introduced.

155 Mr. LIVINGSTON. Will the Examiner permit us, when the case is put in by the other side, possibly after we put in our case, if any, to renew the motion on the same theory?

Trial Examiner EICKHOFF. Certainly.

Mr. LIVINGSTON. Thank you.

Examination by Trial Examiner EICKHOFF:

Q. I would like to ask the witness one question. I don't know whether it is in the record. When were you first employed by the Mackay Radio Company?

A. In February 1927.

Q. And how long did you work for them?

A. I worked at Portland, Oregon, in the operating room, for a period of three to four months, and then I was under the jurisdiction of Mackay Radio ships and had a position in Alaska for a period of up to 1928, the spring of 1928. I was out of the employ and jurisdiction of the Mackay Radio Company from that time until January 13, 1930.

Q. And then were you continuously in their employ from January 1930 up to the time of the strike?

A. Yes, sir.

Q. And are you employed at the present time?

A. By the Mackay Radio; no, sir.

Q. Or by any other radio company?

A. No, sir.

156 By Mr. EDISES:

Q. You have related your conversation with Mr. Jorgensen. Did you have any further conversations with any company officials subsequent to that conversation with Mr. Jorgensen?

A. Not that I recall.

Q. Did you attend——

Mr. MERRICK. (Interrupting.) Jorgensen?

Mr. EDISES. Yes.

Q. Did you attend any meetings of any kind of company employees after the strike?

A. Yes.

Q. When and where?

A. I attended a meeting which was held on the 6th floor of the Postal Telegraph Building. That is one floor below where the H. B. operating room is, in the clock room, a lecture hall.

Q. What was the date of that meeting?

A. It was Wednesday, the 9th, I am quite sure.

Q. And were you asked to attend the meeting?

A. Only by one of the members of the ARTA, who thought it would be wise for me to do so.

Q. Do you know who called that meeting?

A. Only by hearsay.

Q. Who presided at that meeting?

A. Mr. McLaughlin.

157 Q. And were all of the employees of the H. B. office present at that meeting?

A. No; not all the employees of the H. B. office were present. I would say between 30 and 40 men were present.

Mr. LIVINGSTON. You mean operators?

Mr. EDISES. Just a moment. I would prefer not to have counsel for the respondent direct questions at the witness.

Mr. LIVINGSTON. That was directed at you, Mr. Edises. You didn't mean employees. You didn't mean telegraph boys or stenographers or telephone operators. You meant operators.

Mr. EDISES. Yes; but I prefer not to have the question framed in such a way that the witness is expected to answer directly.

Trial Examiner EICKHOFF. The witness will understand he is only under examination at the present time in the hands of Mr. Edises. Any questions that Mr. Livingston may put may be deemed to be put to Mr. Edises.

Mr. LIVINGSTON. That is my understanding, Mr. Examiner.

Mr. EDISES. Read the last question, Mr. Reporter.

(The last question and answer referred to were read aloud by the reporter as above recorded.)

Mr. EDISES. What was your question, Mr. Livingston?

Mr. LIVINGSTON. You don't mean all the employees? You mean the operators, I take it?

158 By Mr. EDISES:

Q. You mean 30 or 40 operators?

A. Operators and scabs.

Q. Will you describe what took place at that meeting?

A. I arrived at the meeting after it had opened. At the time I walked into the meeting Mr. McDonough, from New York, a scab from New York, was telling the men from Mackay Radio in San Francisco, who were sitting in the back part of the room, that they had not come out there as scabs; that they were not scabs, but were merely trying to straighten us out; that we had been misrepresented in the east, and that they were not to stay here and keep our jobs, but were going to go back east just as soon as we could be straightened out.

After he got through with this the men of Mackay Radio, all ex-ARTA men——

Trial Examiner EICKHOFF. (Interrupting.) You mean they no longer belonged to ARTA?

The WITNESS. I don't mean in this sense, but I mean that they were ARTA men up to the time they had gone back to Mackay Radio, and I didn't know their position at that time.

They asked several questions—how they could believe this statement—and he couldn't give them any definite statement how he could make them believe that they would all go back to New York, so they asked to see Mr. Jorgensen on this point and have Mr. Jorgensen substantiate his statement that all the scabs were to leave San
159 Francisco, with the exception of Mr. Dugan, who is scabbing at this time, and at that time at the Stock Exchange.

Mr. Jorgensen was sent for and came before the meeting, and, as I recall it, he would not substantiate the fact that they would go back to New York, but said that that was his belief, that they would all go, or be sent, back to New York.

After this discussion Mr. Benson, an operator, asked Mr. Jorgensen why the so-called black list was made out the way it was. He said it looked more like some of the men were put on there for personalities rather than union activities.

Mr. Jorgensen repiled to that and said, "Yes; some of the men were put on there for personal reasons rather than union activities, in so much as every company has to have a cleaning out, and this looked like an opportune time."

By Mr. EDISES:

Q. Did you say anything at that meeting?

A. Yes; I said to Mr. McDonough that, in my opinion, he was a scab, and a dirty scab.

I also asked of Mr. McLaughlin how he felt to be a double-crosser. I asked Mr. Jorgensen, in the case of a Mr. Patterson, who had been working the four to twelve watch and hadn't been able to attend meetings of the ARTA, active in it, why he had been placed on this black-list, and that was covered in his answer.

Q. Did any of the men tell you how the meeting came to be
160 called?

A. Yes. Mr. Henry Poy, an operator at the Mackay Radio, told me Supervisor McLaughlin had announced the meeting was to be held.

Q. Was the meeting held during working hours?

A. Well, that is a 24-hour system at the operating room there, so any time during the 24 hours would be during working hours. There were men present at the meeting who should have been working during the day watch.

Mr. LIVINGSTON. We object to that and ask that it go out—his statement as to what men should have been doing.

Trial Examiner EICKHOFF. Just a minute! Let him explain it, and possibly it will go out.

Mr. EDISES. I think I can reframe the question.

Trial Examiner EICKHOFF. Let him explain. What did you mean when you said men were at the meeting that should have been at work?

The WITNESS. The meeting was called prior to four o'clock. There were some of the men who were due off at four o'clock who attended the meeting. They were there before they were off work. Then after the meeting went past four o'clock there were men who were present who should have gone to work at four o'clock.

Trial Examiner EICKHOFF. Do you know that of your own knowledge?

The WITNESS. Yes.

By Mr. EDISES:

161 Q. Do you know whether the men were docked in their pay?

Mr. LIVINGSTON. We renew the motion and ask that his statement about what men should have done go out. And his statement of his own knowledge is obviously not so, and not binding upon anybody. It is his conclusion purely and simply as to what other men should have done.

Trial Examiner EICKHOFF. I will deny the motion. You can ask him that on cross examination.

Mr. MERRICK. I object to the last question.

Mr. EDISES. I didn't finish asking it.

Trial Examiner EICKHOFF. Just a minute! There is an objection to the question. What was it?

Mr. EDISES. To the question which I had not yet finished.

Trial Examiner EICKHOFF. Let the reporter read it.

(The pending question was read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Do you know whether any of the men were docked during the time of this meeting, that is to say, whether their pay went on or didn't go on during the period of the meeting?

Mr. MERRICK. I object.

A. I know one.

By Mr. EDISES:

Q. Do you know of any instance——

Trial Examiner EICKHOFF. (Interrupting.) Just a min-
162 ute! Do you want to state the ground for your objection?

Mr. MERRICK. I think it is obvious he can not know. It is beyond the knowledge of this witness whether someone received pay in his pay check.

Mr. EDISES. Let's see if he does know.

Mr. MERRICK. He can not know. You know enough about legal procedure to know that.

Mr. EDISES. Let us ask him.

Mr. MERRICK. I object to his answering. I insist on a ruling.

Trial Examiner EICKHOFF. We haven't had the matter of the objection in question determined yet, let alone objection to the answer, if any.

Perhaps I will sustain the objection, but before doing it I would like you, Mr. Edises, to go into the question of how he came by the knowledge which he claimed he had concerning whether or not they were docked. If it appears he has no reasonable basis for it, then the objection will be sustained.

Before repeating the main question try to develop whether or not he had means of acquiring such knowledge.

By Mr. EDISES:

Q. How do you know some of the men were not docked during this period?

Mr. MERRICK. You are presuming the question is answered.

Trial Examiner EICKHOFF. The question should be: How
163 does he know whether they were docked?

By Mr. EDISES:

Q. Will you answer the question just phrased by the Examiner?

A. One of the men who was there on company time told me he was not docked.

Trial Examiner EICKHOFF. Who was the man?

The WITNESS. A man still employed at Mackay Radio. I wouldn't like to say his name in court. I will be glad to tell the Examiner.

Trial Examiner EICKHOFF. This is an open proceeding and anything that can not be said openly can not be said, and unless you can reveal his name I do not think we should allow the testimony.

The WITNESS. Very well. The man is Mr. Sam York.

Trial Examiner EICKHOFF. Mr. Sam York told you that during the time he was supposed to be at his station, and while he attended a meeting, he was receiving pay and was not docked for that time?

The WITNESS. He did.

Trial Examiner EICKHOFF. Objection overruled.

Mr. MERRICK. May I examine him further on that?

Trial Examiner EICKHOFF. Not at this time.

Mr. MERRICK. I think this is the proper time, Mr. Examiner. He said Mr. York told him, and I would like to find out when and
164 where it was. These men normally worked a certain amount of overtime and it would be quite a little job for anyone to figure out just whether he was docked for half an hour at a meeting or not, unless he kept track of his own overtime.

Trial Examiner EICKHOFF. I shouldn't think it would be difficult for you to establish later whether or not these men were docked.

Mr. MERRICK. I don't think it is a material question.

Trial Examiner EICKHOFF. It is certainly within the knowledge of the company and shouldn't be difficult for you to establish that.

Mr. MERRICK. Neither is it difficult for Mr. Edises to establish it by competent evidence.

Trial Examiner EICKHOFF. I will ask him to ask the witness when and where Mr. York made the statement.

By Mr. EDISES:

Q. Will you state when Mr. York made that statement to you in regard to his not having been docked, and where it was made?

A. Yes. It was made in the Labor Board meeting Sunday.

Q. Sunday, what date?

A. I will have to look at the calendar.

Trial Examiner EICKHOFF. Wait a minute! Last Sunday?

The WITNESS. Yes, sir.

Trial Examiner EICKHOFF. With reference to today?

The WITNESS. Yes, sir.

165 By Mr. EDISES:

Q. You mean this last Sunday?

A. Yes, sir.

Q. Where did he say that?

A. At the Labor Board.

Q. At the office of the National Labor Relations Board?

A. Yes; office of Mr. Wagonet.

Q. You mentioned a Mr. McDonough. Who was Mr. McDonough?

A. As far as I know, he is just a plain, ordinary scab who is very active in the work here in Mackay Radio and demoralizing the men.

Q. Do you know when he went to work for Mackay Radio of California?

A. No; I don't know.

Q. Was he employed prior to the strike?

A. He was employed in New York, I believe.

Q. Not in San Francisco?

A. Not in San Francisco.

Q. Do you know when he came to San Francisco?

A. He arrived Tuesday morning; Tuesday morning, the 8th of October, as far as I know.

Q. Do you know what his activities were at the Mackay Radio office in San Francisco after he arrived?

Mr. LIVINGSTON. We submit that is impossible.

Trial Examiner EICKHOFF. Confine that to what comes within your personal observation.

166 A. Within my personal observation I didn't see Mr. McDonough do any work. I saw his name on the time sheets from 10 to 6.

Mr. LIVINGSTON. May we have the answer read, please?

(The last answer was read by the reporter aloud as above recorded.)

Mr. MERRICK. It is obvious he couldn't have seen him working because this witness wasn't working during that period. I move that the answer be stricken.

Trial Examiner EICKHOFF. It might be pertinent to determine whether he was in a position to observe whether or not Mr. McDonough was working.

Mr. EDISES: All that I asked——

Mr. MERRICK. (Interrupting.) I am referring to his answer; not to your question. He said, according to his personal observation he didn't work—this witness testified, in answer to a question by the Examiner, that he himself hadn't been working since October 4th.

Trial Examiner EICKHOFF. I didn't take that as evidence that Mr. McDonough was not working, Mr. Merrick.

Mr. MERRICK. He has certainly got to show something more.

Trial Examiner EICKHOFF. The witness has already said he didn't see him working. That proves nothing but that he didn't see him working.

By Mr. EDISES:

167 Q. When did you see his name on the time sheet, and where?

A. The first time I went up to see Mr. Jorgensen in the H. B. operating room, I looked at the time sheet and seen Mr. McDonough's name there, and he was also pointed out to me in the operating room. At that time he would circulate from one group of men, three or four or five in a group, and circulate to another group of men, and stand around and talk.

Q. Did you see Mr. McDonough do this?

A. Yes.

Q. That was on the day that you went to Mr. Jorgensen?

A. Yes; Wednesday the 9th, I am quite positive.

Q. Did you see anything——

Examination by Trial Examiner EICKHOFF:

Q. Was it in or out of the Mackay office?

A. In the H. B. operating room.

Q. So then you did see Mr. McDonough in the H. B. operating room?

A. Yes, sir; and times after that under the same conditions.

By Mr. EDISES:

Q. Did you ever see him doing the work of an operator?

A. No, sir; I didn't.

Mr. LIVINGSTON. We object to that on the ground that it is incompetent, irrelevant, and immaterial. The evidence is, he wasn't an operator.

168 Mr. MERRICK. He was a supervisor, wasn't he?

Mr. EDISES. We don't know.

Mr. MERRICK. Why don't you find out?

Trial Examiner EICKHOFF. I believe this witness testified that he was a supervisor.

The WITNESS. No, sir.

Mr. EDISES. No.

Trial Examiner EICKHOFF. I believe you are thinking about another man. I don't think anybody testified as to what his job was.

Mr. LIVINGSTON. Sorry.

By Mr. EDISES:

Q. When you saw the time sheet, on the occasion you just mentioned, did you see anything on that time sheet which indicated the status of Mr. McDonough, or what his job was?

Mr. LIVINGSTON. We object to that on the ground, first, as it calls for his conclusion; and, second, that the time sheet is the best evidence as to what the contents are.

Mr. EDISES. I want to know what he saw.

Mr. LIVINGSTON. He cannot testify to what he saw in a document.

Trial Examiner EICKHOFF. If you are going to object to that, we will have to ask for the time sheet.

Mr. MERRICK. We haven't refused anything.

169 Mr. LIVINGSTON. We have given them everything they wanted that they asked for, and we will continue to do so.

Trial Examiner EICKHOFF. All right; if they want to produce the time sheet, we will not allow the question. It seems this is a delay over a detail.

Mr. MERRICK. In point of view of delay, we are wasting hours by permitting testimony of a secondary nature where primary evidence is equally available. He is asking the witness questions when he has other competent witnesses to testify about it, and the witness is testifying to things he has no knowledge of, is making many misstatements of fact that will have to be corrected by calling the proper witnesses. That is what is delaying this hearing.

Trial Examiner EICKHOFF. Let's exercise a little common sense.

Mr. MERRICK. That is what we want.

Trial Examiner EICKHOFF. If the man states accurately now what he read on the time sheet, and you have no objection, would you still prefer to take the time to bring in the time sheet?

Mr. MERRICK. Yes.

Mr. LIVINGSTON. We can not memorize what is on there, and we doubt if anybody else can.

Mr. MERRICK. The mere fact that the act does not require you to follow ordinary rules of legal procedure, it seems, is no reason

170 for your departing from them all. Some of them have ground in common sense.

Trial Examiner EICKHOFF. Let us not get into a general discussion. Kindly confine yourself to the point under discussion.

Mr. MERRICK. You said we should be guided by common sense.

Trial Examiner EICKHOFF. In reference to that point.

Mr. MERRICK. I think, as I said, that if the rules——

Trial Examiner EICKHOFF. (Interrupting.) I heard what you said. That is enough; please desist.

Are you going to bring in the time sheet?

Mr. MERRICK. If we are requested for it, we will do so.

Trial Examiner EICKHOFF. Will you make such a request?

Mr. EDISES. Has your Honor sustained the objection to Mr. Rone's testifying as to what he saw on the time sheet?

Trial Examiner EICKHOFF. If the time sheet is available, I will; yes. The time sheet is certainly the best evidence.

Mr. EDISES. I will request that that time sheet for that particular day on which——

Mr. LIVINGSTON. (Interrupting.) What day was that?

The WITNESS. Wednesday, the 9th, I believe.

Mr. EDISES. Wednesday, the 9th—on which Mr. McDonough's name appears, be brought in. Will you bring that in this afternoon?

Mr. LIVINGSTON. We will be glad to.

171 By Mr. EDISES:

Q. You mentioned a Mr. Watkins as being the manager of the Lobitos station. Is that his job, manager?

A. I don't know his title there.

Q. What are his duties, if you know?

A. He is apparently in charge there; I should say chief operator or manager.

Q. Do you know whether there is anyone higher in authority than he, in Lobitos?

A. None that I know of.

Mr. LIVINGSTON. May we ask if the gentleman has ever served or worked in Lobitos? Will the Examiner kindly ask counsel to ask that question?

Mr. EDISES. I asked what he knew.

Trial Examiner EICKHOFF. You asked him on what basis he says "apparently." We might develop that information for Mr. Livingston.

By Mr. EDISES:

Q. What was your basis for your statement in regard to Mr. Watkins' position at Lobitos?

A. Operators that worked down there.

Q. They told you about him?

A. Yes. I have been with the company since 1930, and I have a general view of who was working where, and what he is doing, although I do not know his official status with the company.

172 Trial Examiner EICKHOFF. Did you ever, in the course of your work for the company, communicate with Mr. Watkins down there?

The WITNESS. No, sir.

By Mr. EDISES:

Q. Do you know when Mr. Hatch joined the Local No. 3, ARTA?

A. It is available in the minutes.

Q. Do you know if he ever held any office?

A. No, sir, I don't.

Q. Did he ever serve on any committees of the ARTA?

A. He was appointed to one committee under the jurisdiction of the Administrative Committee, to draw up an outline of the duties of operating electricians. He did this.

Q. Do you know when Mr. Burtz joined the Local ARTA?
A. He was one of the first.
Q. Did he ever hold office?
A. I don't know.
Q. Did he ever serve on a committee?
A. Not that I know of.
Q. Mr. Rone, do you want your job back?
A. Very much.
Q. If you are reinstated—if your reinstatement is ordered, would you go back to work?
A. Yes, sir.
Q. If permitted?
A. Yes, sir.

173 Q. Have you been working at any other job since you lost your job at Mackay?

A. I have an application in with the United Autographic Register Company and I am now studying for that position, but I am not technically employed there.

Q. Have you been making—have you been employed on any job on which you have made any money since you lost your job with Mackay?

A. I haven't received ten cents.

Mr. EDISES. That is all.

Trial Examiner EICKHOFF. You may cross examine. I will only want one counsel to cross examine the witness.

Mr. MERRICK. We had some discussion last evening at the close of the session, and before the opening of the session this morning, about producing certain minutes of the Association known as American Radio Telegraphists' Association——

Trial Examiner EICKHOFF (Interrupting). Local.

Mr. MERRICK. (Continuing.) Local No. 3, San Francisco.

I make the request that there be produced in this room, as soon as convenient, the minutes of all meetings of that local or of any divisions or subdivisions of it, as to which this witness has testified on his direct examination.

Mr. EDISES. What specific meetings do you have reference to?

Mr. MERRICK. We have no transcript of the testimony.

174 I do not know how we can tell you. You ought to know what you put in on your direct case.

Mr. EDISES. I believe that the meetings that were referred to on direct were the initial organization meeting, a meeting held September 13th, and a meeting——

Mr. MERRICK (Interrupting). You should show the year date.

Mr. EDISES. The first meeting was some time in 1934.

Mr. LIVINGSTON. February 1934.

Trial Examiner EICKHOFF. Can't we get at it this way: You want the minutes relating to all meetings concerning which testimony has been produced.

Mr. MERRICK. Correct. I suppose that your notes as to your examination of this witness would show that those meetings were.

Trial Examiner EICKHOFF. Are you in a position to accede to that request?

Mr. SALISBURY. No; that——

Trial Examiner EICKHOFF. (Interrupting,) Make your answers to Mr. Edises.

By Mr. EDISES:

Q. May I ask of Mr. Rone, in regard to the meetings he testified to? You testified as to occurrences at that meeting first——

Trial Examiner EICKHOFF. (Interrupting.) Just a minute! The record shows what he has testified to.

175 Mr. EDISES. I want to get it specifically. I would like to know exactly.

Mr. LIVINGSTON. I know what he testified to, and so do you.

Mr. MERRICK. This might be off the record, might it not?

Trial Examiner EICKHOFF. For the time being, until further notice, this is off the record.

(Discussion off the record.)

We will resume the hearing and you may make your statement for the record, Mr. Edises.

There is a demand on the record?

Read the request or demand of Mr. Merrick regarding those minutes.

(The request made by Counsel Merrick for the production of certain minutes was read aloud by the reporter as above recorded.)

Mr. EDISES. We will endeavor to produce the minutes of all the meetings concerning which the witness testified on direct if those minutes can be located.

Mr. MERRICK. Do you want to mention the time?

Mr. EDISES. We will try to have them here this afternoon, or as early as possible.

Mr. MERRICK. Then will it be understood that even though the cross examination of this witness may otherwise be terminated prior to the production of those minutes, that the counsel for the respondent shall have the right to further cross examine if he

176 deems fit, after having examined the minutes?

Trial Examiner EICKHOFF. Have you any objection, Mr. Edises?

Mr. EDISES. I think that is all right.

Trial Examiner EICKHOFF. I think that is fair.

Would you like to take a recess now, or be interrupted during your cross examination?

Mr. MERRICK. I prefer the recess now.

Trial Examiner EICKHOFF. We will take a ten minute recess now.

(At this point a recess was taken after which proceedings were resumed as follows:)

Mr. EDISES: Mr. Examiner, I would like at this time to request the production of the time sheets of the H. B. office during the entire period of Mr. McDonough's employment here. I believe that that employment was during a limited period, is that correct?

Mr. MERRICK. Yes; I understand so.

Mr. EDISES. Can we have those at the earliest opportunity?

Mr. MERRICK. They will be here after lunch.

Mr. EDISES. All right.

Cross examination by Mr. MERRICK:

Q. Mr. Rone, you testified that you were on one of the early
177 committees that was organized by ARTA. I think you said it was called the Administrative Committee.

A. Yes.

Q. That was in the early part of 1934?

A. In 1934. I was merely on committees—that was business of the committee, administrative business; yes.

Q. What was the nature of your duties?

A. My duties at that time were to help in the organization of the ARTA?

Q. That means soliciting members?

A. Pardon?

Q. That means partly soliciting members?

A. Yes.

Q. How did you go about soliciting these memberships?

A. I had meetings in my own home, and I attended meetings in other members' homes.

Q. Did you contact these employees at Mackay Radio individually, some of them?

A. Yes.

Q. Did you ever talk to any of them while you were at the office?

A. Not a great deal. I tried to keep the union out of the office.

Q. But you did some?

A. I couldn't state anyone that I did; no.

Q. I didn't ask you for the time, but you did talk with the men at the office?

178 A. The discussion came up at the office occasionally; yes.

Q. And that means during the time that you were there, supposed to be on duty?

A. I wouldn't say that. I would say during the period of the lunch hour. I don't recall any time that I did do it, but I may have.

Q. You are not willing to say that you didn't at any time speak to a member about the union activities while you were on duty?

A. I am not.

Q. And how much time did you say you spent a week on this work, approximately?

A. Some weeks none, and some weeks ran as high as 15 or 16 hours.

Q. You were very much interested in that work?

A. Very much.

Mr. MERRICK. Before examining the witness any further, I would like to renew the motion I made to strike out his testimony in regard to his reason for joining the ARTA. It seems to me they are wholly irrelevant to this proceeding. As I said before, they do not bear on any of the issues formed by the complaint and the answer.

Trial Examiner EICKHOFF. The motion is denied.

By Mr. MERRICK:

Q. You said that there were a variety of reasons for your
179 joining the association. One of them was, you said, favoritism. You said the only instance that you could recollect was the preferment of Salisbury over Palmer. Is that correct, that is the only instance that you can remember?

A. I believe I said the only instance that I could recollect other than generally. I knew of lots of instances of favoritism that I wouldn't bring forth the details at this time—couldn't bring forth the details at this time.

Q. And you thought the supervisor at that time had some particular personal relationship toward Salisbury that caused him to prefer him to Mr. Palmer?

A. No, sir; I don't; I think he was down on Palmer.

Q. It wasn't so much a case of loving Brutus more, but Caesar less; is that it?

A. That is my opinion in that case; yes.

Trial Examiner EICKHOFF. Is that the Mr. Salisbury we have been talking about, the man who went east?

The WITNESS. Yes.

By Mr. MERRICK:

Q. You said that the midnight watch was the worst watch and the least desirable?

A. It is; yes.

Q. It is true that some men preferred the midnight watch to any other?

A. Yes; usually the incompetent men. I shouldn't say incompetent; I should say the inexperienced men, or men who don't
180 feel like getting in the heat of traffic during the day, do prefer the midnight watch. There are instances of that.

Q. In other words, it depended somewhat upon the individual whether he preferred to be free in the evening or whether he preferred the morning or the afternoon?

A. That depends on the ability of the individual.

Q. You mean, if an operator was not a capable operator he wanted to be on when traffic was lightest?

A. That is true.

Q. Then wouldn't it be true also that from the point of view of the company they might want the best operators on during the times when the traffic was heaviest?

A. That might be the company's opinion.

Q. So that there might be reasons, other than those of mere favoritism, for putting a man on a watch?

A. Not in this instance.

Q. What instance is it that you are talking about?

A. The one that I testified to.

Q. Salisbury and Palmer?

A. Yes.

Q. But apart from that particular instance you would agree that there would be times when the company would prefer to have a particular operator on a particular watch.

A. Naturally.

Q. You are pretty familiar with all the circuits operated out of the H. B. office?

A. I believe so.

181 Q. And some of these circuits communicate with foreign countries?

A. Yes, sir.

Q. Is it your opinion that it might be possible that one person might be preferred to operate with Japan or China?

Mr. EDISES. I object to that question, and similar questions, which are calling for the opinion and conclusion of this witness.

Mr. MERRICK. That is quite obvious that it is material since he has been testifying and giving his opinions all through the direct examination.

Trial Examiner EICKHOFF. I will allow the question.

By Mr. MERRICK:

Q. Isn't that true?

A. Basically, if a man is employed and gets a salary for an operator, he should be able to hold any circuit in the office. If he can not, no favoritism should be shown him, or any man over him. He should be discharged and a man employed who can do the work.

Q. But not all men are equally adaptable to all types of work, are they?

A. Some men are not as adaptable as others, because they don't show the interest; yes.

Q. And quite apart from that there may be other reasons why a man can work on a foreign circuit—why a man can work on a domestic circuit that can not work so well on a foreign circuit; is that true?

182 A. I couldn't say so.

Q. Did you ever work a foreign circuit?

A. I have worked them, but wasn't assigned to any.

Q. But you wouldn't say it is impossible that one man could be better on a domestic circuit than on a foreign circuit, would you?

A. Pardon?

Q. You wouldn't say it was impossible for a man to be more adapted for use on a domestic circuit than he was for use on a foreign circuit?

Mr. EDISES. I object to that question as calling for his opinion on something that would be better established in some other way, if Mr. Merrick wants to establish the point.

Trial Examiner EICKHOFF. I can see the bearing on cross examination, although I do not think the question is very clear there. If the witness has no opinion, he can say so.

Mr. MERRICK. I am asking about his opinion, and I have also asked whether he thinks it possible that this might not be true, because he said he thought there were reasons where preferences were not based upon merit or the quality of the service.

Mr. EDISES. What difference does it make what he thinks is possible or not possible? What bearing has that on it?

Mr. LIVINGSTON. That is what we would like to know.

183 That is the basis for our motion originally to strike it all out.

Mr. EDISES. He hasn't expressed an opinion on that point in this record.

Trial Examiner EICKHOFF. The witness, on his direct testimony, said that certain transfers were or were not made because of favoritism. Now these gentlemen are seeking to develop whether or not there might not have been other considerations besides favoritism. I think they are entitled to do that so long as the other testimony stays in. Of course, the weight of the evidence is really what is concerned in this line of examination.

Mr. EDISES. Mr. Examiner, it seems to me that there is better evidence of those facts than the testimony of Mr. Rone. Surely they have some of the company officials that can establish those points better than Mr. Rone's opinion evidence on the matter.

Trial Examiner EICKHOFF. But the witness has already given testimony on these matters.

Mr. EDISES. I don't believe he testified as to those matters on direct.

Trial Examiner EICKHOFF. I don't want to be liberal with one side and strict with the other. We have been liberal on certain occasions on direct, and we ought to be fairly liberal on cross examination.

Mr. EDISES. I have no objection to that.

184 Trial Examiner EICKHOFF. After all, it only goes to the weight of it.

Mr. EDISES. Very well.

Trial Examiner EICKHOFF. Will you proceed?

Mr. MERRICK. Is there an unanswered question, Mr. Reporter?

(The pending question referred to was read aloud by the reporter as above recorded.)

A. I will have to go back to my previous answer—that any man, an operator, who couldn't fill the position that he was assigned to should have been discharged.

By Mr. MERRICK:

Q. That is not the point of the question. Let us take that up for a minute. Do you think that if a man in an operating room is a fairly good operator and is assigned to a particular circuit and there

are complaints about his operating, his work on that circuit, that the company should immediately fire him and not transfer him to some other circuit and see if he can work satisfactorily there?

A. If a man was a fairly good operator, there would be no reason for the complaints. You will have to restate your question in some other way.

Q. If you don't mind, you just answer my questions as I put them, if you can; if you can't, just say you can't; but don't suggest how I should phrase them.

Trial Examiner EICKHOFF. He is calling for your opinion, if any.

185 The WITNESS. He says if a man is a fairly good operator and there are complaints about his operation. If he was a fairly good operator, there would be no complaints.

Trial Examiner EICKHOFF. I thought you meant in connection with the earlier question.

By Mr. MERRICK:

Q. Then you would say that if the person operating the other end of the circuit complains about the man the company has assigned to the San Francisco end of the circuit here, in New York, that he should immediately be fired by the company?

A. If proof was given that he was not doing his best, yes.

Q. It isn't a question of his doing his best; his best may not be quite good enough.

A. Then he wouldn't be a fairly good operator.

Q. In other words, in your opinion, as a man of some experience in this business, any good operator can operate any circuit?

A. Yes, sir.

Q. And if he can't operate any circuit to which the company wishes to assign him, in a satisfactory manner, the company should fire him?

A. Right.

Q. What does this seniority rule mean to you, that you talked about on direct examination? What is that rule?

A. When I went to work for Mackay Radio in 1930, it was
186 posted on the bulletin board, in the rest room of the operators, a list of seniority. I had not been informed by anybody in an official capacity that this seniority was to be carried through, but it was the general understanding among all operators that the senior men were entitled to the hours that they desired and were entitled to the first promotions available.

Q. What?

A. To promotion if he was capable for the promotion.

Q. And that the company was to have no discretion whatsoever in the matter; is that right?

A. I didn't know at the time where this seniority had originated. Later Mr. A. J. Tuel told me he had originated it himself, and his feeling that it was always being carried out.

Q. I am asking you whether the person who stood senior on the list was to be automatically given his preference and promoted, in case of a vacancy, to a higher position regardless of whether he was considered by the management to be as capable as the man who might be slightly his junior on the list.

A. I stated before that——

Q. (Interrupting.) Never mind what you stated before. Answer my question. We know what you stated before, in a general way.

A. I stated before——

Q. (Interrupting.) Answer the question.

187 A. Well, I will have to give the same answer.

Q. Then give the same answer.

A. The same answer is that if a man was—my understanding of the seniority rule was that a man was to have his choice according to his seniority, of the hours that he was to work; according to the seniority he was to have the next promotion that he was in line for, if he was capable.

Q. You haven't answered the question. Does that mean regardless of whether, in the opinion of the company, a man who might be his junior was better for the particular hours that he might apply for, or was more suitable for the vacancy in the higher position?

A. That was my interpretation.

Q. That all management discretion was gone and everything depended upon his standing on the list?

A. It was not my interpretation.

Q. That was not?

A. No. My interpretation was that the man was to be promoted if he was capable.

Q. You are just dodging the question each time. You answer inconsistently. I will repeat: Was it your understanding that if a man stood senior on the list and, in the opinion of the management, the man who stood below him on the list was better fitted for a vacancy in a higher office, that the company, nevertheless, was to have no choice, but had to put the man who stood at the top of the list in the vacancy?

188 A. No; that is not my understanding.

Q. It was not?

A. No, sir.

Q. There was some room for discretion in the management?

A. Yes; capability was the room for discretion.

Q. And capability is a pretty general term, isn't it?

A. Yes.

Q. It depends on the particular type of work, it depends somewhat on his personality and, so far as a supervisor is concerned, it may depend on whether or not he is successful in handling men, is that right?

A. I am not a company official. I couldn't tell you.

Q. You are asked to express your opinion. What is your opinion about it?

A. My opinion of the seniority list was explained to me by the men in the office.

Q. We don't care who explained it. What is your opinion, no matter what it is based on?

A. It was that all promotions, according to seniority, would be made, except because of lack of ability, rather than a tie in ability, or slightly greater ability of one operator over the other. There was to be no deviation from the seniority list excepting in those cases where there was a notable lack of ability of the man who was senior on the list.

189 Q. Now, in the case of a vacancy in the office of supervisor, for example, it might be quite possible that a man who was not quite such a good operator as another man might, nevertheless, be better adapted for the position of supervisor, isn't that true?

A. I would say no; if a man is a good operator he would make a better supervisor.

Q. Would you say that the best supervisor would necessarily make the best traffic manager?

A. Now, that is a matter of a man's individual personality I would say.

Q. You think personality begins to come into the situation with traffic managers, but it does not, is not involved with supervisors?

A. No, sir.

Q. What are the duties of a supervisor?

A. The duties of a supervisor is to supervise the movement of traffic, to assign the men to different circuits in the office so that the office is balanced and the traffic flows freely; then, too, in the case of H. B. Mackay Radio, they sometimes have the entire watch. That is the period from 4 until 12 they may be entirely in charge of the entire office and the flow and handling of the traffic.

Q. What are the duties of a traffic manager?

190 A. Well, my interpretation of the duties of a traffic manager——

Q. (Interrupting.) What are they from your observation?

A. He does the hiring and firing and supervises the supervisors.

Q. In your opinion, supervising supervisors is a different sort of a job from supervising operators?

A. Yes; as far as a better——

Q. (Interrupting.) You think the position of supervisor can only be filled by a very good operator?

A. I think it should be filled so.

Q. Can only be filled?

A. No; I did not say can only be filled. Should be filled by a good operator.

Q. Do the duties of the traffic manager require that he be a good operator too?

A. He should be a good operator.

Q. But it requires something more than merely being a good operator?

A. Yes; it does.

Q. And the duties of a supervisor require more than their operating ability, too, don't they?

A. I wouldn't say so.

Q. Does he have to do much operating ordinarily?

A. No; the supervisors of the Mackay Radio do fill in and do considerable operating. However, I don't think that is the practice the world over.

191 Q. But they don't have to be as fast as a man has to be to operate the New York circuit, for example?

A. They should be.

Q. I say, does he have to be?

A. Well, they could appoint you supervisor then.

Q. Pardon?

A. They could appoint your supervisor; that is entirely up to the company.

Q. You think that might be possible without interfering with the work in the office?

A. Well, yes. I think that you could be appointed as supervisor. The men are good operators. If they are, they could carry on as well with you as without you.

Q. You don't know whether I am an operator or not, do you?

A. I have no knowledge.

Q. So then you state that it isn't necessary for a supervisor to be an operator?

Trial Examiner EICKHOFF. I think the witness has made himself clear. I wish you would go on to something else.

Mr. MERRICK. If so, I would like to know what it is.

Trial Examiner EICKHOFF. He distinguishes between what the job demands and what the company might do with reference to the job. I think it is obvious. He says that a supervisor should be a good operator, but the company might put a bum one in.

192 Mr. MERRICK. He said the office could function just as well; that if he had good operators to do the work he wouldn't necessarily have to be a good operator himself.

Trial Examiner EICKHOFF. That is not my understanding of that.

By Mr. MERRICK:

Q. Isn't that what you said?

A. I said, in the case of appointing you supervisor; yes. Because if a man of low ability is appointed as supervisor, he loses the respect of the good operators. In your case they would know you were not an operator, and would probably cooperate and help you.

Q. But if I were a good operator they wouldn't cooperate?

A. They would cooperate with you more.

Q. You have already said that the only instance you knew of favoritism was the instance of Salisbury and Palmer. Do you know of any other instances where the seniority rule was violated, as you understand the rule?

A. I know many, but it is general, and I couldn't relate the instances, the time, and place, and perhaps not accurately whether they actually happened. There were continually protests and discouragements in the office during that period of time.

Q. But you can not relate—remember any specific instances?

A. I do, but I wouldn't want to make the statement, make a statement that I couldn't clear up.

Q. Why not?

193 A. Because many factors have to be considered. They will probably come out later in other men's testimony.

Q. That is not for you to determine. You refuse to state any instances of favoritism or violation of the seniority rule?

A. I do.

Q. You made some mention in your direct testimony of increasing the salaries of some people, when others who stood on an equal basis were not raised. What instances can you cite to support that statement?

A. I cite the instance of myself, senior to an operator, Mr. Mohler.

Q. Who was preferred?

A. Mr. Mohler.

Q. When did that take place?

A. The first time, I believe, in 1932.

Q. 1932?

A. Yes.

Q. Had he a longer service record than you?

A. No; shorter.

Q. You considered yourself a better operator?

A. I did.

Q. How long did you remain on the lower salary basis after he was raised?

A. Six or seven months.

Q. Six or seven months?

194 Q. Six or seven months?

A. Yes.

Q. How much did the increase amount to?

A. $10.00.

Q. $10.00?

A. Yes.

Q. And then subsequently you were raised to the same level?

A. Yes.

Q. Did you make a complaint about that?

A. No.

Q. Didn't mention it to anybody?

A. No; I wanted my job.

Q. That is the only instance that you can recollect?

A. No. Later the same man, Mr. Mohler, was appointed supervisor over a great many men who were senior to him. Such was the reason for the organization, as I stated. Mr. McLaughlin was senior

to Mr. Mohler—he and Mr. McKercher was senior to Mr. Mohler. Mr. Orell was senior to Mr. Mohler. He was appointed supervisor. And when these men joined the organization some discussion was made in the meeting with Mr. A. Y. Tuel and the committee, and he was asked why he had been appointed over these men, and he took it under advisement. Later Mr. McKercher and Mr. McLaughlin, who were the senior men, were appointed supervisors, but Mr. Mohler was still retained as a supervisor.

195 Q. And you think that the company should have selected the men for vacancies in the office of supervisor, solely on the basis of their seniority?

A. I think that inasmuch as the two men I mentioned were better operators, they should have been appointed over Mr. Mohler; being senior and better operators, yes.

Q. Because, as you think, the chief prerequisite in a supervisor is that he be a fine operator?

A. I think so; at least to hold the respect of the men he must be a good operator.

Q. In that case then, the complaint was made to the company, and the matter was reviewed and a certain adjustment was made?

A. That is true.

Q. Any other instances you can recall?

A. Not right now.

Q. There is another reason you gave for joining ARTA, and that was the low wage scale of the Mackay Radio. You are pretty generally familiar, are you, with the salaries paid all classes of people in the H. B. office?

A. Pretty familiar.

Q. Pretty generally familiar with the wages paid people employed in a similar occupation by other companies?

A. In the San Francisco area; yes.

Q. What were the salaries being paid by Mackay Radio in

196 1934 at the time that you joined ARTA, which I believe you said was February 1934?

A. Yes.

Q. What were Class A operators getting then?

A. As I recall, it was $169 some odd cents.

Q. What was Class B operators getting?

A. $159 and some odd cents.

Q. Class C?

A. $149 some odd cents—$148 and some odd cents.

Q. Class D?

A. I don't believe there was a Class D.

Q. That was the bottom class?

A. Yes.

Q. Was there a class of student operators?

A. I don't believe there was at that time.

Q. What other classes of employees were there in the office?

A. We had check boys, supervisors.

Q. What were supervisors getting?
A. I wouldn't know definitely.
Q. What were check boys getting?
A. I only know one check boy, and he was getting in the neighborhood of $75.
Q. About $75?
A. A month; yes.
197 Q. Those are the only wages that you know about in February 1933, of the H. B. office?
Trial Examiner EICKHOFF. You mean 1934?

By Mr. MERRICK:

Q. 1934; Yes.
A. Yes.
Q. What were Class A operators getting with RCA in San Francisco?
A. According to seniority of Class A operators, some of them, I believe, were getting $190 a month.
Q. Some of them?
A. Yes.
Q. What were the rest of them getting?
A. It ranged from $180 to $190, according to seniority.
Q. What were Class B operators getting with RCA?
A. They had no classification there. I believe that they were promoted along according to their seniority.
Q. You mean all operators got between $180 and $190?
A. No. They may have had a new man there that got $150, but the general wage at the RCA was considerably over the Mackay.
Q. You think the lowest paid operator received at least $150 a month?
A. Yes.
Q. From RCA at that time?
A. Yes.
Q. What did RCA pay supervisors?
198 A. I was told by an RCA employee that the supervisors got $220 a month, but it sounded a little bit out of line to me.
Q. It sounded a little low or high?
A. A little high.
Q. What did you think they probably got?
A. $210.
Q. Do you know anything about other salaries paid by RCA in their office in San Francisco at that time?
A. Well, I don't know anything more about it; no.
Q. How about Globe Wireless? What were supervisors getting with the Globe Wireless at that time?
A. I don't know of any supervisors at Globe Wireless.
Q. Did they have a classification of operators then?
A. No.
Q. What were the operators getting?

A. I believe their standard was the same as Mackay, only a dollar up.

Q. About a dollar a man higher per month than Mackay?

A. Yes.

Q. But without classification and depending on seniority?

A. Yes. But their work is strictly manual, and naturally their wages over all would be lower than that of the tape operators.

Q. Any other company you had in mind when you said that
199 the Mackay scale of wages was below that paid by other companies?

A. No.

Q. You said it was about a dollar less than Globe and, of varying amounts, less than RCA?

A. Yes.

Q. Do you know how long the wage scale had been in effect with RCA at that time? Had they recently received increases?

A. I don't believe they had at that time.

Q. You think that was the wage they had been paying through 1933, for example?

A. Yes.

Q. What were Mackay Radio operators getting in 1933?

A. I believe that we had a wage increase sometime during that time. I had a wage increase, having moved from a coastwise bracket of $159.60 to $169 something, but I don't recall any raises made during 1933.

Q. Were there any further increases granted by Mackay Radio after February 1934?

A. Yes; there was an increase granted us in August 1934.

Q. Was that increase all down the line with the various classes of employees?

A. Well, everyone in the operating room, I believe, received a raise. Some of the men received, in the lower brackets, such as
200 the newly-created Class D, received a raise ranging from 25 cents to $1.50. I don't know the exact figure. My raise was in excess of $10.

Q. What did that bring yours to?

A. $180 a month.

Q. And a man doing comparable work with RCA was then getting what?

A. $190 and $195.

Q. And what were the men at the Globe then getting?

A. You must understand that the Globe men were doing work that was specified in our agreement with Mr. Tuel, manual operation. That was specified to be paid at $150 a month. They got a raise to the standard that Mackay paid of $180, and $170, and $160, and $150, according to seniority; but they were all doing manual operation, which Mackay had stipulated was to be paid at the flat basis of $150.

Q. Then the only company that you think you could properly compare with Mackay, as far as wage scale goes, was RCA?

A. No. If I worked for Globe Wireless I would get the same money I did with Mackay, but I do at least $20 or $30 less work.

Q. You measure your work by the dollars' worth? How much less work is $20 or $30 worth?

A. Well, there is an enormous mental strain in the transcription of tape. Of course, a man's ability to transcript tape or receive
201 manual would come into the question there. But it would be much easier on a man mentally and physically to do manual operation than it would to transcribe tape.

Q. How many feet of tape is equal to $30 worth of service? Can you measure it that way?

Trial Examiner EICKHOFF. I think that is a little out of line, Mr. Merrick. The witness need not answer the question.

By Mr. MERRICK:

Q. The wage scale in August, you say, 1934, in Mackay Radio and Globe Wireless were approximately the same?

A. They were.

Q. And the only company that was comparable that paid a higher wage was RCA?

A. Right.

Q. And their Class A operators, which corresponded with RCA to the Mackay Radio Class A operator classification, was about $10 a month higher?

A. Between $10 and $20 higher, yes—$10, $15, and $20.

Q. They paid as high as $200, then?

A. I heard so, but I couldn't substantiate it.

Q. You heard it?

A. I heard some of the men had been promoted to $200 a month.

Q. Did you ever know of an instance where a man left the
202 employ of RCA voluntarily and came to work for Mackay Radio?

A. I know one instance, yes.

Q. Do you know what he got with RCA?

A. No; I don't.

Q. Do you know what he got with Mackay Radio?

A. Yes.

Q. Did you ever hear him say whether he got a less salary with Mackay Radio than he got with RCA?

A. He told me he came to Mackay because he hadn't been raised when some of the other men at RCA had been raised. I don't know whether it was a personal grievance or a differential in salary.

Q. You think probably he came to Mackay Radio because he got more pay?

A. I have no reason to believe that. I think it was more of a personal grievance.

Q. You think that he left because he was disliked at RCA?

A. Yes; because he said he wasn't raised when the other men were raised.

Q. Would he leave there to come to Mackay at less wages, under those circumstances, than he was getting with RCA?

A. Yes; I think he would.

Q. But you don't know whether that was the case or not?

A. I don't know.

Q. You don't know of any cases where a man came to work
203 for Mackay Radio where he got less than he got with RCA?

A. No.

Q. Another reason that you assigned for joining ARTA was the policy of Mackay Radio in respect to vacations. What was the nature of your complaint on that score?

A. Vacations—When I went to work for Mackay Radio vacations were to be granted, if I recall the rule correctly, one week for one year's service; two weeks for two years' service. When I had been there one year——

Q. (Interrupting.) When was that?

A. In 1930.

Q. 1930.

A. When I had been there a year the vacations were moved to one year, no vacation; two years, either one or two weeks. The next year they were cut out entirely.

Q. What year was that?

A. 1932, I think.

Q. 1932?

A. Yes, sir.

Q. What was the policy in 1933?

A. In 1933 there were no vacations.

Q. No vacations at all?

A. No.

Q. What was the policy, or didn't you know what it was, in February 1934, as to 1934?

204 A. I did not know whether there was to be a vacation or not; presumably not.

Q. And what did you think the company should do about vacations?

A. I felt they should grant them, as competing companies were granting them.

Q. What were they?

A. Two weeks.

Q. With pay?

A. With pay. Six months employed, one week; one year employed, two weeks.

Q. And were those vacation schedules kept up by the other companies, to your knowledge, in 1930, 1931, 1932, and 1933?

A. To my knowledge; yes.

Q. Do you have any knowledge about it?

A. Yes.

Q. You know that they were?

A. I do.

Q. And that all the men in Globe and RCA that had been in the service more than a year were given two weeks' vacation with pay?

A. Not all the men in Globe or RCA; one instance in each case where the men had received vacations during that period of time.

Q. You knew just one instance in each case? Did you know
205 whether that was to be the general rule in the company or not?

A. I knew it was a general rule with both companies that was being carried forth. But I know of one instance where the men in each company actually got their vacation. I knew they got their vacation; yes.

Q. Did you get any vacation in 1934?

A. I took a month off on my own.

Q. Without pay?

A. In 1934—yes; I received a vacation in 1934.

Q. What was it?

A. Two weeks.

Q. With pay?

A. Yes. I took two weeks on my own.

Q. Do you know what the general business condition was in this country between 1930 and 1934?

Trial Examiner EICKHOFF. I think that is going a little too far afield.

Mr. MERRICK. He is explaining about a vacation policy.

Trial Examiner EICKHOFF. I understand.

By Mr. MERRICK:

Q. During the period from 1930 to 1934 do you know of many instances where men were discharged by Mackay Radio from the H. B. office?

A. I do.

Q. How many?

206 A. I don't know any definite number. There were quite a number discharged.

Q. Approximately how many?

A. I couldn't say approximately; I say quite a number.

Q. Well, ten?

A. I should judge there were that many.

Q. More than that?

A. My feeling is there were more than ten.

Q. Fifteen?

A. I wouldn't want to go that high.

Q. You wouldn't go that high. Between and fifteen?

A. I should judge that many men were discharged.

Q. Pardon?

A. I should judge there were that many men discharged during that period.

Q. Do you know for what reason they were discharged?

A. There was a natural seasonal lay-off, and business did slack off, and that caused some men to be discharged, and I guess that about covers it.

Q. Were they re-employed at the end of the seasonal lay-off?

A. Some were and some weren't.

Q. How many men were employed by Mackay Radio in the H. B. office when you joined it in 1930?

A. I wouldn't know.

207 Q. You wouldn't know?

A. No.

Q. How many were there in 1931?

A. I wouldn't know that either.

Q. How many in 1932?

A. I wouldn't know that either.

Q. How many in 1933?

A. I wouldn't know that either.

Q. How many in February 1934?

A. I would judge between 45 and 52 operators.

Q. That is the first time that you took any interest in how many there were there?

A. Yes, sir.

Q. Did you know anything about the comparable financial condition of RCA and Mackay Radio?

A. No.

Q. Never heard anything about the financial condition of the company you were working for?

A. I heard——

Mr. EDISES. (Interrupting.) I am going to object to that line of testimony calling for his opinion about a matter as remote as that; it would be purely conjectural on his part.

Mr. MERRICK. I beg leave to say it can not be very remote.

208 He said he complained about the wages. I want to find out whether he thinks wages should have any relation to the earnings of the company.

Trial Examiner EICKHOFF. I do not think this is proper cross examination. I will sustain the objection.

Mr. MERRICK. I will say—we don't have to take an exception.

Trial Examiner EICKHOFF. Would you like to adjourn now and resume ten minutes to two, or go another ten minutes?

Mr. MERRICK. I would just as soon continue a bit more.

Trial Examiner EICKHOFF. Proceed.

By Mr. MERRICK:

Q. The next reason you assigned for joining the union was the inadequate provisions for the consideration of complaints by the employees. What was the staff organization in the H. B. office in February 1934? That is, there were operators and clerks, check clerks, supervisors, is that right?

A. Yes, sir.

Q. Who was next over the supervisors?
A. Mr. Layman, chief operator.
Q. Chief operator?
A. Yes.
Q. Who is next to him?
A. I don't know. Mr. H. L. Rodman was the head of the organization. I knew that.
209 Q. You don't know whether there was anybody between Mr. Layman and Mr. Rodman?
A. I don't.
Q. You don't know?
A. No.
Q. Did you ever hear of Mr. Jorgensen?
A. Mr. Jorgensen was an operator at that time.
Q. Was anyone then occupying the position that he now occupies?
A. Mr. Layman was chief operator.
Q. That is what Jorgensen is now, chief operator?
A. Yes, sir.
Q. And you didn't know of anyone between Mr. Layman and Rodman?
A. I do not.
Q. What was Captain Dodd's position?
A. I don't know Captain Dodd's official title, other than purchasing agent for either the Mackay Radio or the Federal Telegraph Company of California.
Q. Then, as you understood it, the next man over an operator was the supervisor?
A. Yes, sir.
Q. The next one over the supervisor was the chief operator?
A. Yes, sir.
Q. And over the chief operator there was Mr. Rodman?
A. That is right.
210 Q. What was his position?
A. I don't know Mr. Rodman's official title, other than West Coast General Manager.
Q. He seemed to be more or less in charge of all the operations of the company on the west coast.
A. Yes; on the west coast.
Q. Now, how many complaints did you have yourself to make prior to your joining ARTA you thought had not been properly considered by the company?
A. I had many complaints that I didn't make.
Q. How many that you tried to take up with the company?
A. Three.
Q. Prior to February 1934?
A. Yes, sir.
Q. What were those three?
A. The one I outlined when I addressed the letter to Mr. Rodman and Mr. Layman had not forwarded the letter. Another one——

Q. (Interrupting.) What was that one?
A. I believe I gave that in my testimony.
Q. Would you mind answering the question?
A. You want me to outline it again?
Q. The substance of it?
A. I wanted to write a letter to Mr. Rodman, through Mr. Layman, for his approval of a transfer to New Orleans in the
211 event a station opened there. I wrote this letter to Mr. Layman——
Q. (Interrupting.) That is all that was, about your transfer to New Orleans?
A. Yes, sir.
Mr. EDISES. Mr. Examiner, I suggest that the witness be permitted to finish what he was saying. I think it was all in response to the question asked by Mr. Merrick in regard to what happened.
Trial Examiner EICKHOFF. I think he wanted to identify that complaint. Did you want to go any further on that?
The WITNESS. No, sir; I don't.

By Mr. MERRICK:

Q. Did you have any particular preference for New Orleans, as a place to work, over San Francisco?
A. No, sir; but the heat was on in San Francisco, and it looked like time to move.
Q. The heat was on—you mean it was warm weather?
A. The heat by Mr. Layman on myself.
Q. He had taken some kind of dislike to you?
A. A great dislike.
Q. And so you made a request for a transfer to New Orleans and submitted it to this man whom you thought disliked you, and you wanted to have him transmit it to Mr. Rodman?
A. Yes, sir.
Q. And he just retained it?
212 A. The first letter that I submitted to him, he wrote a curt reply on the bottom that there would be no transfers, and he didn't want to hear any more about it.
As I stated before, I discussed it with Mr. Jorgensen, who was quite as upset about it as I, as he felt we should have some means, or some consideration on questions that arose in the operating room, which Mr. Layman was not only authorized to do, but was not in his jurisdiction.
I later wrote another letter and forwarded it to Mr. Rodman directly and supplied Mr. Layman with a copy of the letter. I believe that got some action because Captain Dodd called me into his office.
Q. Captain Dodd called you into his office?
A. Yes, sir.
Q. Then you knew he had something to do besides ordering supplies?
A. I don't know Captain Dodd's official connection with the company.

Q. I didn't ask you that. What were his relations to the men in the office?

A. I don't know.

Q. You didn't think it peculiar that he called you in? You didn't know that he was between Mr. Layman and Mr. Rodman?

A. No one has ever told me so.

Q. You didn't know that he was then?

213 A. I don't now.

Q. What happened then?

A. Captain Dodd has always been considerate of all the problems that I have discussed with him, and Captain Dodd told me that it would have consideration. That was the end of it.

Q. That was about your question of your transfer to New Orleans?

A. Yes, sir.

Q. Does the company operate an office at New Orleans?

A. They have since opened an office. My application was sent in based on a rumor that an office was to be opened, and so worded.

Q. By the Mackay Radio and Telegraph Company; that is, the respondent in this action?

A. Yes.

Q. You know that for a fact?

A. That they opened an office in New Orleans?

Q. Yes.

A. Yes; I have seen an official statement to that effect.

Q. That Mackay Radio, the respondent in this action, opened an office in New Orleans?

A. Mackay Radio—there are two companies of Mackay Radio. I don't know which one, which company opened the New Orleans office, but the Mackay Radio issued a statement that there was an office of Mackay Radio and Telegraph Company in New —.

214 Q. You didn't press this matter of being transferred to New Orleans, did you?

A. Not after I had talked to Captain Dodd.

Q. Was something done to relieve the situation as between you and Mr. Layman?

A. Yes. There was the organization of the union, and that relieved the tension.

Q. Never mind what the reason for it was. But did he remain as supervisor?

A. As chief operator.

Q. Chief operator?

A. Yes.

Q. He did remain as chief operator?

A. He did.

Q. For how long?

A. From the time the organization was formed until some time in August or September of 1934.

Q. Then what happened?

A. Mr. Jorgensen replaced Mr. Layman as chief operator.

Q. Was Mr. Layman then demoted?

A. He is now employed by the company as, I believe, senior supervisor, but I don't know whether you would call that a demotion or not; I don't know whether his salary is better or not.

Q. What were the other instances in which you had made
215 complaints to the company, or tried to make them?

A. The other instance—This was strictly a personality in all these things that I am saying, a personality of the working conditions between ourselves and Mr. Layman, the chief operator. That is the reason for the organization of the union.

Q. That was what you mean by the inadequate provisions for the consideration of complaints, that is, the fact that Mr. Layman was not very cooperative with the men?

A. That is true.

Q. You had no complaints about any other member of the staff there?

A. Not any operator.

Q. The other two involving Mr. Layman were in regard to his refusing to recognize the seniority rule, or committing acts you thought were acts of favoritism?

A. I have stated one.

The other one is in case of a man relieving me at midnight. He had transmitted a message up and down instead of across. The policy at that time in the operation was that the relieving operator was responsible for placing his sign at the point he took over the transmission of this message.

I was relieved and saw the man place his sign on the message, but
I didn't see him place the point that I was relieved at, and he
216 went ahead and punched the rest of the message up and down,
instead of straight across. It was a code message.

Later this caused a check of the message to be off, and later the New York office asked for a re-punch of the message because the check was off. The man took the entire message and punched it up and down, instead of straight across, again.

Naturally, there was quite a bull letter sent to the west coast on account of that by the New York office, and they wanted to know who was responsible for this.

Mr. Layman placed the entire blame of this incident upon me because I hadn't indicated on the message where I was relieved; also contending I was responsible for the second bull of the message.

At this time there was an error check system that was greatly played up before the operators, and in some cases some men would be fortunate in being able to say, "Well, I wasn't involved in this," and get away with it; and other men, such as men not in the favor of Mr. Layman, would suddenly find five or six of these bull letters on hand.

Mr. Layman handed me this bull letter and had written on it the curt statement, "How the hell did this ever occur?"

I was slightly bewildered to know how any operator could punch a message up and down, instead of straight across, and I wrote

217 a note and asked him myself how he could do it, and stated I had punched the message to a certain point, as the perforated tape showed, and I had nothing to do with the transmission of the message after I was relieved at midnight.

Mr. Layman wrote me another letter, or a short note, and told me that I was charged with this error and I had better not make any more errors like that or that I would be immediately dismissed.

I went to Mr. Layman and endeavored to talk to him on it, and Mr. Layman was very curt and said if I didn't like it that I could get to hell out and get out quick; that I was charged with that error and that he didn't want any more like that.

I said, "I would like to take this question up with Mr. Rodman and see why I am forced into a position of accepting a dumbell error like this on my record. It doesn't help my record and I am not responsible for it."

He said, "You heard me. You can either get out or go back and go to work."

Q. Did you try to see Rodman?

A. No; I believed him.

Q. Did you try to see Captain Dodd?

A. No.

Trial Examiner EICKHOFF. We will recess now until two o'clock, gentlemen.

218 (Thereupon, at 12:05 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2:00 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner EICKHOFF. Are the parties ready?

Mr. EDISES. Ready.

Mr. MERRICK. Yes; we are ready.

Trial Examiner EICKHOFF. Do you wish any of this morning's testimony read?

Mr. MERRICK. You might read the last question or two and answers.

(The last two questions and answers were read aloud by the reporter as above recorded.)

LON N. RONE, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross examination by Mr. MERRICK:

Q. You have now mentioned all of the cases in which you had grievances with the company, in which you attempted to take them up with the company?

A. No; I haven't mentioned all the cases that I had grievances. I mentioned all the cases that I could recall and give the facts on at this time.

Q. I can not ask you to testify about those you do not know
219 the facts concerning. If Mr. Layman had acted as you think he should have acted in forwarding your complaints to the proper authority, that would have been all that you have asked for in this case?

A. That is right.

Mr. EDISES. I object to the question and ask that the answer go out. It is a hypothetical question, and certainly there is no way of knowing what he would have done at that time, at this particular moment.

Trial Examiner EICKHOFF. It has been asked and answered, and we will leave it in.

By Mr. MERRICK:

Q. You mentioned something about the appointment of a telephone operator to work after hours, on your direct testimony?

A. I mentioned a man, a Mr. McAllum, who was not a telephone operator, but a repeater man, technical man.

Q. How long did he work in the H. B. office?

A. I believe he was only there one night.

Q. What happened to him then?

A. A protest was made, and Mr. McAllum told me he had been canned.

Q. Who made any protest?

A. It was made through the ARTA?

Q. To the company?

A. To one of the officials of the company; I don't know which official.

220 Q. And they acted upon it by having him taken from the payroll?

A. That is what Mr. McAllum told me.

Q. That was a satisfactory disposition of the case, was it?

A. Yes.

Q. Now, did you have any reasons for joining the union than those that you have mentioned?

A. Well, I have always felt that an organization of high skilled labor is the right thing to have; it smooths the progress of work between the individual employees and the employer.

Q. That is, if you had had no grievances against the company you still would have probably joined the union?

A. I probably would have joined the union; yes.

Q. Is it a fair summary of what you have testified to that in the instances in which grievances——

Mr. EDISES. (Interrupting.) I object to the question because the best evidence is what he actually said himself. It is in the record.

Trial Examiner EICKHOFF. I think the record speaks for what he has testified to, unless you have something that you want to bring out.

Mr. MERRICK. Let me complete the question and see if he renews his motion.

Q. Is it a fair summary of your testimony that in the cases
221 in which you had complaints, and they were brought to the notice of a responsible official of the company—that is, someone higher than the chief operator—that the company listened to the complaints and at least did something to remedy the complaints, in some cases the remedy was completely satisfactory?

Mr. EDISES. I renew my objection and add that it is a complex question composed of several different questions all in one.

Trial Examiner EICKHOFF. Objection overruled.

A. Yes; any time that I went over Mr. Layman's head, or was able to get over his head, I was accorded fair treatment. However, I took my job in my hands by going over his head, and he told me so.

By Mr. MERRICK:

Q. But he is no longer chief operator?

A. No, sir.

Q. Wasn't for some time prior to the strike, was he?

A. No, sir.

Q. The first meeting that you testified of ARTA was held, you said, in February 1934?

A. The first meeting that I attended was held about February 1934.

Q. Were you a member of the ARTA then, or was that called as a meeting of employees of the company to see whether they would join the union?

222 A. I believe there were members of the ARTA at that time in an active group, but I wasn't, and several others who attended the meeting were not members.

Q. Were not members of Mackay?

A. ARTA.

Q. This meeting that you are talking about was really an ARTA meeting?

A. Yes, sir.

Q. Or a meeting to determine whether the employees of Mackay Radio would join ARTA?

A. Well, as I understand it, it was an ARTA meeting held for the purpose of getting all Mackay employees, and of other competing companies, there to discuss organization.

Q. It wasn't strictly a meeting of the organization, but of people they wanted to have join the organization, as well as those who were members?

A. Yes; it was an open meeting.

Trial Examiner EICKHOFF. Were the members who were there members of the local, or some other division of ARTA?

The WITNESS. My recollection of the meeting was, Mr. Volney G. Mathison was vice-president and presided at the meeting, and some of the Mackay men had already joined ARTA. However, I don't remember which ones. A great many of us who attended the meeting had not at that time joined.

Trial Examiner EICKHOFF. But the local was not then in
223 existence, was it?

The WITNESS. No.

By Mr. MERRICK:

Q. Who presided at that meeting?

A. Mr. Volney G. Mathison did the presiding, assisted by Mr. Loudermilk and Mr. Orell, I believe.

Q. How many did you say, approximately, were present them?

A. I wouldn't know very closely, but I should say between 30 and 45 operators.

Q. And how many of those, as near as you can estimate, were Mackay Radio employees?

A. I think all but above five.

Q. All but about five?

A. Yes.

Q. But you said, on your direct examination, that you could only remember the names of the five men who were present, is that correct?

A. Well, I could probably recall, if I stopped and thought, the names of the other people who were present.

Q. But the five that occurred to you when you tried to think of who was there, are the five complainants in this case?

A. That is true.

Q. They are the only ones that occur to you?

A. The only ones that occur to me, because they are here to refresh my memory.

224 Mr. EDISES. Will you please read the answer, Mr. Reporter?

(The answer referred to was read aloud by the reporter as above recorded.)

By Mr. MERRICK:

Q. How many employees of Mackay Radio at that time were eligible for membership in the ARTA?

A. I don't know how many employees there were at that time.

Q. What are the rules as to the admissibility of membership?

A. At that time Mr. Mathison said that you had to earn your livelihood from radio to be admissible to ARTA. I believe there was later an amendment to the constitution whereby associate members could be taken in, such as check clerks and telephone operators and such, who did gain their livelihood from radio, although not radio operators.

Q. Are supervisors eligible for membership?

A. Absolutely.

Q. Are chief operators and traffic managers?

A. Absolutely.

Q. General managers of the company?

A. If they gain a livelihood from radio; yes.

Q. Mr. Rodman, for example, he is eligible for membership?

A. He would have been very welcome.

Q. You testified on direct examination that the San Francisco Local No. 3, had, in the first place, a division between marine and point to point, and then the point to point division was subdi-
225 vided into three main divisions, Mackay Radio, Globe, and RCA; is that right?

A. Yes.

Q. Did each division have officers?

A. Officers?

Q. Yes.

A. The local secretary of the point to point group of Local No. 3 of ARTA was over all three divisions. However, each group had a representative who took care of taking their dues and keeping the men informed. I don't know the setup that each organization had, but there was one man appointed by each of them to take up the dues at the various places where they were at.

Q. ARTA is a national organization?

A. Yes.

Q. What are the national officers, not the names, but the positions—a president?

A. A president, a vice-president, and, I believe, the next is secretary-treasurer, and committeemen.

Q. Committeemen?

A. I don't know whether that is the correct term for them. Anyhow, there is, for each geographical part of the United States, in each division, a broadcast, marine, and point to point man, whose duties, and, I believe, his title is committeeman, who has jurisdiction and holds a vote for that geographical portion.

226 Q. Then in your San Francisco local, what are the officers?

A. In the San Francisco local there is the general secretary, Mr. Rathborne, at this time; then there is for the point to point group a secretary, Mr. Salisbury.

Q. Now, you don't have any president or vice-president or chairman?

A. No, sir.

Q. The secretary, then, of Local No. 3, is really the head of the local?

A. Yes, sir; as far as I know.

Trial Examiner EICKHOFF. Any standing committees, permanent committees?

The WITNESS. Not that I know of, sir. I am only familiar with the point to point.

By Mr. MERRICK:

Q. And does the secretary preside at the meeting when you have a meeting of the local?

A. Not necessarily; the general secretary, or our own secretary, presides or appoints someone to preside in his place.

Q. I don't understand you. If there is a meeting of the local, who calls the meeting to order?

A. Our secretary of the point to point.

Q. I am not talking about the point to point meeting but a meeting of the whole local. Did you ever have such a meeting?

227 A. Yes; we have joint meetings; we had one September 13th called to order by the secretary of both divisions, Mr. Rathborne.

Q. And he presided at that meeting?

A. Yes, sir.

Q. What are his powers to bind the organization by virtue of his office; do you know?

A. I don't know.

Q. That is the only officer you have of the local as a whole, the secretary?

A. Yes, sir.

Q. Do you have a delegate from the local as a whole?

A. I am speaking of the point to point only. I know nothing of the marine or broadcast setup of ARTA. My answers to all your questions deal strictly with the point to point group. We have no delegates, unless the men who take up the dues at Lobitos, or transmitter of M. K., or Globe Wireless at Mussel Rock could be termed delegates.

Q. Then actually it is almost as though there were two separate locals, the marine and point to point?

A. Yes.

Q. You don't often have common meetings?

A. No.

Q. Then when you have a meeting—How often does this point to point division have regular meetings?

228 A. Regular meetings are called for once a month.

Q. And then does the Mackay Radio subdivision have separate meetings?

A. That depends on the committeemen and the business to be taken up. Sometimes the committeemen would call informal meetings to be held in some one of the members' apartment or home, which would not come under the head of a meeting of the ARTA, but as of a committee meeting.

Q. Committee meeting?

A. Yes.

Q. Did you have any regular meetings of the Mackay Radio division of the point to point division?

A. Yes.

Q. When do they come?

A. Once a month.

Q. You said the point to point division itself was once a month, and I asked whether you had——

A. (Interrupting.) The Mackay Radio was called at that time, too.

Q. You mean at a monthly meeting you don't meet together with the Globe and the RCA, but that it is a separate meeting for each one of the subdivisions?

A. We call a general meeting of the point to point group, and all Mackay business to be taken up is taken up; all Globe Wireless
229 business to be taken up is taken up, and all RCA problems to be taken up are taken up.

Q. Then you don't have a regular meeting of the Mackay Radio subdivision by itself?

A. There have been times when only the Mackay men have been notified there was a meeting, but that would be a special meeting.

Q. No regular meetings, are there?

A. No, sir.

Q. And when you take up matters at the point to point division meeting, do all members have the right to vote upon questions involving Mackay Radio, for example?

A. Only members who are Mackay Radio employees.

Q. Globe Wireless and RCA people don't vote on a question involving Mackay Radio?

A. No, naturally.

Q. What notice is given of these meetings, do you know, under the by-laws? You have by-laws?

A. Yes.

Q. What notice is required to be given of a meeting?

A. I couldn't quote it.

Q. What notice have you received of a meeting?

A. Usually there is a notice posted on the bulletin board, or one of the officers of the organization has informed me personally sometimes; usually letters are mailed, especially on the monthly
230 meetings; and sometimes special meetings will be called on verbal notice only.

Q. That is, by verbal you mean oral, somebody called you on the telephone or spoke to you?

A. Yes.

Q. Do you know whether, in such cases, every single member was notified?

A. I couldn't swear if every single member was notified. As far as we could, we were always anxious to get every member possible to come to the meetings.

Q. You don't know what the by-laws require; that is, whether they require that everyone must receive personal notice of each meeting?

A. No; I don't.

Q. I take it, then, that special meetings are held from time to time when there is no written notice mailed to the members, and the only notice they receive is oral?

A. I believe that has been done.

Q. Has any meeting ever been held that you know of, that you didn't get a notice of?

A. None.

Q. What sort of minutes were kept of the meetings of the point to point division? Did you have a recording secretary?

A. Yes.

Q. And it is his duty to record the minutes of each meeting, and they are read at the following meeting?

231 A. They are.

Q. And approved as amended, or approved as originally submitted?

A. That is right.

Q. And are copies of these minutes usually sent to the members?

A. No; they are posted on the bulletin board in the ARTA office.

Q. I think the first contact that you testified to between the union and the company occurred in September 1934, is that correct?

A. No; there was a contact made with the company when Mr. Tuel was here in June 1934, or prior to June; June was approximately the time.

Q. You testified there was one in June with Mr. Tuel, Mr. Palmer, Mr. Loudermilk, Mr. Bash, Mr. Mathison, Mr. Salisbury. You said that you had gone there pursuant to a vote taken at the union, a union meeting, is that correct?

A. Yes.

Q. When was that meeting held?

A. I couldn't give you any date on the time the meeting was held.

Q. Very close to the time that you met with Mr. Tuel?

A. It was a meeting just prior to the time we met Mr. Tuel; yes.

232 Q. That was a meeting of the Mackay Radio division of the point to point division?

A. That was a meeting of the Mackay Radio Division of the point to point division committee representing the H. B. operators before Mr. A. Y. Tuel, vice-president of Mackay Radio.

Q. I am talking about the meeting of the union prior to your meeting with Mr. Tuel.

A. I don't recall whether it was a general or special meeting.

Q. You don't remember?

A. No.

Q. Were these men that you mentioned as a special committee, was that a standing committee?

A. The standing committee was termed the grievance committee and, I believe, Mr. Palmer and Mr. Loudermilk were two members of the committee; and Mr. Bash was the third member of the committee, which was to have three members. However, upon deciding who was to interview Mr. Tuel it was decided that the more men who interviewed Mr. Tuel, the less likelihood of any action being taken against the men because, although they could very easily

replace two or three men; if it got down to five or six, it would be a little harder to do.

Q. So that these people were not all members of the committee; they just were taken along for protection?

233 A. True.

Q. And you say the three were a standing committee?

A. Yes.

Q. Did you receive any particular instructions from the membership as to what you were to do at this first meeting with Mr. Tuel?

A. As I recall, we were authorized to negotiate with them and accept anything that Mr. Tuel offered. We were not authorized to call a strike.

Q. Now, that is the meeting I want to ask you about. When did that meeting take place in which you were given that authorization?

A. The only thing I can tell you about that is that it was immediately prior to the time Mr. Tuel was interviewed.

Q. It was a special meeting?

A. I don't remember whether it was a special or general meeting.

Q. Do you remember anything about the notice that was given of it?

A. No; I don't.

Q. How many men were present at that meeting?

A. I should judge 30, 35, Mackay men.

Q. How many Mackay men at that time were eligible to be present at the meeting?

234 A. I don't know how far the organization at that time had gone into Mackay, but I believe we were around 85 per cent organized; that would be 85 per cent of the operating staff.

Q. How many were in the operating staff?

A. I don't know.

Q. You didn't know?

A. No.

Q. Although one of your official duties was to solicit members, and try to get 100 per cent membership, you don't know, didn't know, how many men there were that were eligible?

A. I know approximately how many were in there, but not exactly.

Q. Approximately how many?

A. There were over 45—between 45 and 55 operators in Mackay Radio eligible to serve on the committee.

Q. I am talking about eligible for membership in the union.

A. Well, any employee was eligible who gained his livelihood from radio.

Q. Didn't you know about how many there were?

A. Well, it would take a great deal of thought on my part to cover everyone in the organization of Mackay Radio and not omit some. If we were to take the rule of the union the way it reads, we would include the accounting department, and include anyone who derived

their livelihood from the operation of radio; so I believe the
235 company officials could tell you closer than I could how much of their personnel actually derive their livelihood from radio, and what part do not derive their livelihood from radio.

Q. You had a meeting, then, of 30, and you are not sure whether it was a special or general meeting. What was the question that was voted on?

A. A great deal of discussion about demands were made, and I don't recall the wording of any resolution, or who offered the resolution.

Q. What were the demands in principle?

A. The principle of the demands were to improve working conditions, to raise the wages, and other things.

Q. Raise wages—that is one.

A. True.

Q. Anything else that you remember?

A. Improve working conditions.

Q. What did that mean?

A. That meant, literally, to change the head of our department.

Q. The removal of Mr. Layman?

A. Yes; and the return of the seniority.

Q. How is that?

A. The return of the seniority system.

Q. Anything else?

A. Well, a great many things went on that I couldn't quote.

236 Q. I am talking about the meeting—at the meeting, what was the nature of the demands discussed that you were authorized to negotiate with the company?

A. We were authorized to negotiate to benefit the operators in all of the complaints that they had against the company such as discrimination and placing of one man over another man who is junior to him in seniority and inferior to him in ability; to protest the appointment of Mr. Mohler as a supervisor when there were senior and better operators available; to——

Q. (Interrupting.) You think all this was discussed at the meeting and you were given blanket authority to negotiate in respect to it?

A. We were.

Q. The men that you said were present, with the exception of Mr. Mathison, were all Mackay Radio employees?

A. Yes.

Q. What kind of work did they do with the company? Were they operators or clerks?

A. All operators.

Q. What classification did they have?

A. The men, as they are here now—that was where the classifications came from in that meeting. The classification, then, was just operators.

Q. Were they the highest paid operators? No one was paid
237 higher as an operator than these men at that time by Mackay?

A. I don't know. There may have been some who got $150 and others who got $160.

Q. You say there were no classifications at all, of the operators, prior to the meeting with Mr. Tuel?

A. Not under the designation of "A," "B," "C," and "D," as we have now, to my knowledge.

Q. Were there any other designations?

A. No; other than manual and tape.

Trial Examiner EICKHOFF. Mr. Merrick, will you try to make this not unduly lengthy? Will you keep that in mind?

Mr. MERRICK. I will try to do so.

Q. What were the demands you made in respect to wages?

A. As I recall it, we intended asking for a little more than we expected to receive. We had discussed it with the men, and the men all felt that $185 was the absolute minimum that we should settle for, with the understanding that further raises would be forthcoming in the future. However, the settlement was made after we had——

Q. (Interrupting.) Let's not go too rapidly. Did your committee suggest a classification of operators?

A. I don't recall who first brought up the classification of operators. It may have been Mr. Tuel, and it may have been a member of the committee, or it may have been Mr. Rodman.

238 Q. Well, you went there intending to ask for $185 a month for every operator in the whole office?

A. We intended to ask for $185 for every good tape operator in the office.

Q. What other wage demands did you have for those that weren't good tape operators?

A. I don't recall the exact amount, but there was a low bracket for the strictly manual men and that, I think, was around $160 a month.

Q. That was the demand, $160?

A. I wouldn't set the figure because it may not be correct. It was around $160.

Q. How much increase did you ask for for the manual operators?

A. I believe we asked for—no. I couldn't say exactly how much we asked for for the manual operators.

Q. How much was it per month you were asking for for the operators of the class represented by the committee personally?

A. I would like to explain to you that in the H. B. operating room there are two divisions within the operating room that makes it confusing for anyone who doesn't understand the situation. There is the New York circuit, or the circuit going east; there is the trans-Pacific circuit, or the circuit going west. These men are re-
239 quired to work 48 hours a week. At that time they were also required to work revolving watches. These men were work-

ing 48 hours a week. The men working coastwise worked 44 hours a week. Actually the men who worked the 48 hours a week on these other circuits were required to work—if the hourly basis had been compiled, were working for cheaper wages than the coastwise men. Therefore, we didn't ask for as much for the manual men or the coastwise men as we did for the men on the trans-Pacific circuit and the New York circuit.

Q. That is, you measured it by hourly compensation, rather than by total wage, in determining what your demands should be?

A. We did in that instance; yes.

Q. And you say that as a result of this meeting the classification system was set up?

A. Yes.

Q. And substantial increases were obtained for the best operators; is that correct?

A. Yes.

Q. Was it as a result of this meeting that Mr. Layman was removed as a supervisor?

A. I naturally assumed it was.

Q. Some time after that he was removed?

A. Almost immediately after.

Q. Mr. Tuel agreed to the return of the seniority rule?

240 A. He not only agreed; he contended that he had never deviated from it. Any deviation was not on his authority.

Q. Did you make any demands at this time as to vacations?

A. Vacations had been granted, I believe, a couple of weeks prior to our meeting with Mr. Tuel; also with a curt note by Mr. Layman that the ARTA had no reason—had nothing to do with the granting of vacations.

Q. That was true, wasn't it?

A. Not in my opinion.

Q. Do you now decide what vacations are to be given the various men? Does the union decide what vacations are to be given the various men by the company?

A. No; we have no agreement with the company.

Q. Did you submit any written agreement at that time, with the request that it be signed by the company?

A. No.

Q. Had you prepared any written agreement at that time?

A. No.

Q. When was the next meeting of your committee with the members—with the representatives of the company that you testified to on your direct examination, do you remember? Not until September 1934, when you saw Mr. Stone?

A. I believe there was several meetings between the Relations Committee, of which I am not a member, but the next meeting,

241 I recall attending as a member of the committee with the company was that of September 13.

Q. September 13?
A. Yes; 1935.

Examination by Trial Examiner EICKHOFF:

Q. What, again, was the approximate date of the meeting with Mr. Tuel?
A. Approximately, June 1934.
Q. Over a year afterwards?
A. Yes.
Q. I mean the next meeting he had was September '35? It was before that that Mr. Salisbury had to go to New York—before this meeting with Mr. Stone?
A. Yes; he had to go to New York prior to that.

By Mr. MERRICK:

Q. What were the circumstances in connection with Mr. Salisbury's selection? Was that at a meeting that he was named a representative? Was he called a delegate?
A. Mr. Salisbury—a letter was written by Mr. Pyle, vice-president of the ARTA, to Mr. Salisbury to be taken before the meeting of the point to point group of the Mackay Radio, asking them to send him to New York to aid him in negotiation with the point to point agreement, as he, being a marine man, didn't feel that he could——
Q. I don't want to ask you to repeat everything you testified before in your direct examination, but he was requested by Mr. Pyle by name?
242 A. Yes.
Q. I asked you, what meeting did you hold in respect to sending him, if any?
A. A meeting was held, and Mr. Salisbury said he was willing to go.
Q. When was that meeting?
A. Slightly prior to the time he left.
Q. He left about the first of September?
A. Yes; about the first of September.
Q. Was he given any title of any kind by the local organization?
A. Well, Mr. Salisbury has since been elected to an office embracing that geographical location that I referred to as Western Coast Committeeman, I believe.
Q. That didn't bear particularly upon his going to New York?
A. No.
Q. Was he granted any special authority in connection with going to New York?
A. By the membership, you mean?
Q. Yes.
A. The membership said that they would vote for a strike if Mr. Salisbury was not accorded fair treatment by the company in New York.

Q. They voted that a strike would be called if Mr. Salis-
243 bury wasn't accorded fair treatment. Was that the regular or a special meeting.

A. I don't recall.

Q. You remember anything about the notice that was given at that meeting?

A. I don't recall; no.

Q. How many men were present at that meeting?

A. I don't recall; approximately between 30 or 40.

Q. That was about the usual number you had?

A. No; that was about two-thirds of our membership in the downtown office.

Q. Was that a lesser number or a larger number than you customarily had present?

A. About the usual, between 30 or 40.

Q. That was what I asked you. Is it customary, when you have a meeting called for a special purpose, to give the notice of the purpose of the meeting, or just to state that a special meeting is to be held?

A. Usually, the purpose of the meeting is given, but any business is likely to come up at a meeting. I might say also that a resolution had been passed that would clarify this notice, that any resolution carried by the members present was not to be declared carried until each man who was working, or who had a legitimate reason for not being able to attend the meeting, had 24 hours in which to read the minutes of the meeting and vote "Yes" or "No" on all reso-
244 lutions carried.

Q. Then, after a meeting then, the minutes were posted on the bulletin board, and anyone who hadn't been present would come in and ask to have his vote recorded on either one side or the other?

A. That is right.

Q. Do you know whether, after that meeting, any additional people came in and asked to be recorded?

A. Not to my knowledge.

Q. What other vote was taken at this meeting as to the authorizing of a strike?

A. I don't recall any other business.

Q. What was he to be sent to New York for?

A. He was to be sent to New York for the purpose which Mr. Pyle had stated in his letter.

Q. Didn't you pass any resolution for sending him to New York, and what his duties were to be there?

A. A resolution was passed and voted upon if Mr. Salisbury would go to New York and aid in negotiations.

Q. What was he to do, aid in negotiations?

A. Negotiations of the point to point Mackay wage and working agreement, that the membership would stand behind him to the extent that if he was not accorded fair treatment, on his return, that they would strike.

Q. Was anything said about a strike in the event he was
245 not successful in his negotiations?

A. I recall that there was a strike vote taken at that meeting—I am quite sure it was at that meeting, it might have been a prior meeting—a ballot strike vote was taken to see if we would back up the demands of our officers with a strike.

Q. You are not sure whether it was at that meeting?

A. Very close to that time.

Q. That was approximately the form of the resolution as you remember it?

A. That was the substance of what the resolution meant, not the wording.

Q. Who was given the authority to call the strike in the event the demands were not met with?

A. Mr. Salisbury was authorized at a later meeting to call a strike.

Q. At a later meeting?

A. Yes.

Q. Later meeting than September 1?

A. September 13.

Examination by Trial Examiner EICKHOFF:

Q. Let me ask this: There was this meeting at which—which you have been discussing, at which you decided to send Mr. Salisbury; then was there a meeting in San Francisco with Mr. Stone, or
246 somebody, at which he asked for further time?

A. Yes.

Q. Was there a subsequent meeting then of your union at which you decided that unless an agreement had been adopted by the 23rd of September you would strike?

A. Yes; that is right. At the first meeting, which we were referring to as being prior to September 1, a strike vote was taken whether we would strike to support our demands.

Trial Examiner EICKHOFF. That is all right; I just wanted to see whether I was thinking of the same meeting you were discussing or not.

By Mr. MERRICK:

Q. Just to be sure, you are not sure whether that was at the September 1st meeting or earlier?

A. Or earlier, I don't know. There was a strike vote taken.

Q. Do you recollect whether that vote was taken by ballot?

A. Yes.

Q. What was the question on which you were balloting?

A. I believe the closest wording I can come down to is, whether yes or no we would strike to support the demands made under the point to point Mackey working and wage agreement.

Q. That is, the vote was on the question whether you would strike, not whether you would empower somebody to call a strike?

A. If a strike vote was taken, naturally it was up to the offi-
247 cers of the organization to call a strike when they deemed necessary.

Q. So, no further authority was necessary for the officers of the union to call a strike than the authority given at this meeting September 1, or earlier?

A. That is my interpretation.

Q. Had the membership of your local seen a copy of the demands that your leaders were going to present in New York?

A. Yes, sir.

Q. In writing?

A. Yes, sir.

Q. Did you personally see it?

A. Yes; I helped to compile it.

Q. Who else worked on it?

A. Mr. Salisbury, Mr. York, and practically everyone in the organization had a part in it.

Q. Any other delegates from any other part of the United States render any assistance in preparing this agreement?

A. Yes; through their locals and through their meetings suggestions were sent in to include in the agreement such and such a thing.

Q. That is, you had notified the other locals of the union that you were preparing to make demands on Mackay, and asked for suggestions?

A. Yes; we circularized every Mackay employee that we could get the name and address of, with a circular asking him
248 to state what he thought his wages should be, and what he thought working conditions—and what he thought of working conditions, and seniority phases, and practically everything that would be included in a working agreement with the company.

Q. To whom would those communications come, the secretary?

A. You mean, if they were mailed to us, or from us?

Q. Was this circularization carried out by national headquarters, or just by your local?

A. I believe by our local here.

Q. And the answers came in, then, to your local?

A. Yes, there may have been—These circulars were mimeographed, and there may have been a book of them sent to the New York office to be mailed from there. I am not sure on that point. A great many of the answers were mailed direct to the San Francisco office. However, we did have them from other locals.

Q. And then you and who else—never mind the names—the rest of you worked at this material and prepared a set of demands, is that it?

A. That is right.

Q. Was it in the form of a contract to be signed?

A. Contractual agreement, yes.

Q. Did you have the advice of any counsel in preparing it?

A. Mr. Martinelli, yes.

249 Q. Was he admitted to the practice of law in the state of California?

A. Yes, sir.

Q. He is in the employ of the Mackay Radio?

A. Yes, sir.

Q. Do you know whether these answers to these questions have been kept at the local headquarters?

A. I don't get the meaning.

Q. The answers to the questions you sent out.

A. I don't know.

Q. If they were there now, in whose custody would they be?

A. Mr. O. M. Salisbury's.

Q. He is not the secretary?

A. He is the secretary of the point to point Mackay.

Q. Was anything said at this meeting as to the compensation to Mr. Salisbury while he was to be in New York?

Trial Examiner EICKHOFF. I think we went into that on the record.

Mr. EDISES. Mr. Reporter, will you read the last question?

(The pending question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. You meant from the union to Mr. Salisbury?

Mr. MERRICK. That is right.

250 Mr. EDISES. Didn't we go into that on direct examination?

Mr. MERRICK. Is that a special rule of court procedure? We haven't had any question on cross examination before.

Trial Examiner EICKHOFF. Well, if there is an objection to the question——

Mr. EDISES. (Interrupting.) I have no objection to the question, Mr. Examiner.

Trial Examiner EICKHOFF. I don't see what you are quite getting at on that point.

A. I don't know whether Mr. Salisbury was to receive anything from the union for his trip to New York. I had been informed by Mr. Salisbury that he was.

By Mr. MERRICK:

Q. That he was?

A. Yes; to be paid by the union.

Q. Do you know how much?

A. Only what he told me.

Q. What did he tell you?

A. $150 a month.

Q. Just to make this point clear, I think you said the circulars about the agreement were sent to every member, every employee of Mackay Radio, whether or not they were members of the ARTA?

A. We attempted to.

Q. There was not attempt to restrict it to the members of

251 the union, and their opinion?

A. No; we wanted to get the expression of every employee. We didn't want to force anything on anyone.

Mr. MERRICK. Mr. Edises, have you a copy of that contract that was prepared at that time?

Mr. EDISES. It is going to be here this afternoon. One will be here this afternoon.

Mr. MERRICK. And a copy will be made available for us to examine?

Mr. EDISES. Yes; I assume there is a copy available.

By Mr. MERRICK:

Q. Did Mr. Salisbury take this agreement with him when he left for the east?

A. I believe we had already mailed one to the national office and I don't know if he took one with him or not. I guess he must have.

Q. Now, let's pass on to this meeting with Mr. Stone, that you said was on September 13. I am afraid I have to go back a little bit. You said on your direct testimony that an agreement had been presented some time in June 1935, by Mr. Pyle to the officers of the Mackay Radio in New York. What agreement was that?

A. I don't know if I stated June or not. I am not sure as to the time being June—some time between the time of May and July an attempt was made by vice-president Pyle and President Had-
252 dock of ARTA, to present the agreement to Mr. Tuel and Mr. Stone.

Q. That is this same agreement that you are talking about now?

A. This same agreement.

Q. You had finished your preparation along back in May or June?

A. We had, but there were amendments made to it after it had been first presented to Mr. Stone.

Q. Had a full copy of that been submitted to the membership before the September 1 meeting?

A. Oh, yes.

Q. Or the meeting at which this strike vote had been taken?

A. Yes; this had been ratified by all the locals and our own locals a half a dozen times.

Q. Is this the same agreement with amendments?

A. Yes; with amendments.

Q. What was the purpose for which you went in to see Mr. Stone September 13, 1935?

A. I was asked in by acting secretary, Mr. Bash.

Q. Was that a meeting between the Grievance Committee, or the Relations Committee of the union and Mr. Stone?

A. Well, none of us seemed to know what we were going in there for, except Mr. Bash, had been asked to come in. We have a rule in our organization that no officer of the organization can discuss union questions with any other official—with any official of the
253 company unless there are three men; that is, two other men with him.

Q. You mean that Mr. Stone sent for Mr. Bash?

A. That is my interpretation.

Q. And you went in there with Mr. Bash?

A. I went in, and Bash went in. Mr. Palmer and I both went in together.

Q. You said there were also present there, Mr. Bathborne and two members from the marine division?

A. That is right.

Q. Part of the discussion was about the marine hiring agreement, that you didn't take part in discussing?

A. That is right.

Q. But you heard Mr. Stone explain what he thought was defects in the RCA agreement from the point of view of the workers, the employees?

A. Yes.

Q. What was the sentiment of the marine workers as you heard it expressed there as to whether they thought Mr. Stone was correct in what he said or not?

A. I believe that Mr. Stone sold them—Mr. Stone sold them on the fact that their agreement was no good, and that they should take time out and draft a better agreement for their union workers.

Q. Do you know whether an agreement was ever drafted?

A. No; I don't.

254 Q. Then you also discussed this draft of the point to point agreement, is that correct?

A. We discussed very little of the point to point agreement. The members of the comittee who were there—We all felt that we would weaken Mr. Salisbury's and Vice-President Pyle's and President Haddock's case if we were to discuss the agreement too far informally. However, we touched two or three phases of the agreement very lightly.

Q. Did anybody have a copy of it at the meeting?

A. I don't think so.

Q. You don't remember seeing any?

A. No; I don't remember seeing any.

Mr. EDISES. Mr. Examiner, may we have a recess at this time?

Trial Examiner EICKHOFF. Yes.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. Proceed.

Mr. MERRICK. Mr. Reporter, will you read the last question and answer, please?

(The question and answer referred to were read aloud by the reporter as above recorded.)

By Mr. MERRICK:

Q. You said that you weren't pushing the agreement very hard with Mr. Stone here because you didn't want to embarrass the

255 representatives of the union while they were discussing negotiations with New York?

A. Yes.

Q. Did he state that he had seen the agreement, Mr. Stone?

A. That he had seen it?

Q. Did he say where he had seen it?

A. Yes; he said at the time Vice-president Pyle and President Haddock had called on him they had not been ready to discuss the agreement, and they had prevailed on Vice-President Pyle and President Haddock to bring the agreement at a later date. Vice-President Pyle and President Haddock had left a copy of the agreement with them.

Examination by Trial Examiner EICKHOFF:

Q. Which agreement is this now?

A. This is the same agreement.

Q. The point to point agreement?

A. The point to point wage and working agreement.

By Mr. MERRICK:

Q. And the meeting broke up with the assurance by Mr. Stone that he would examine the agreement further after he got back from New York?

A. Yes; with a great deal of assurance that we would be treated very fairly if it was within his power.

Q. Now you said on your direct examination that you had a meeting of your local that night after your meeting with Mr. Stone?

A. Yes.

256 Q. That was a special meeting?

A. Yes; I believe so.

Q. What notice that you know of was given at that meeting to the members?

A. I don't know whether a written notice was given or not.

Q. What notice did you personally receive?

A. I was personally notified by Mr. Bash; the acting secretary.

Q. What did he tell you was the purpose of the meeting, if any.

A. Discussion of the presenting of the Mackay Radio point to point wage and working agreement, and the marine hiring agreement jointly.

Q. At what time was that meeting held?

A. I believe it was called to order around 8 o'clock.

Q. At the headquarters?

A. At the union headquarters, 52 California street.

Q. How many were present; do you remember?

A. Quite a number of men—at least twice the average attendance.

Q. That is, there were 60 to 80?

A. Yes.

Q. Were they all members of the local?

A. There were marine men and point to point men; it was a joint meeting.

257 Q. Only members of the local were eligible to be present at the meeting?

A. I don't recall any challenge being made of anyone who was not a member.

Q. I mean, no outsiders were supposed to be present at that meeting?

A. We have never made a differentiation of any outside member. There had always been the feeling that nothing we could say there would do us any harm, and if anything was said there to which opposition was taken, it would aid our cause.

Q. That is, you let anyone who was interested attend the meeting if he was a man who would be eligible for membership?

A. That was always the procedure while I was present.

Q. But they had no right to vote?

A. No.

Q. Now, was any vote taken at this meeting in regard to the marine agreement or point to point agreement?

A. Yes.

Q. You said it was that they should be presented simultaneously, is that it?

A. Yes.

Q. And at least, one of the motions voted on was to the effect that unless the agreement was signed by September 23, the officers would have a right to call a strike?

258 A. That is right.

Q. They had already the right to call a strike pursuant to the vote passed at the previous meeting if the agreement wasn't signed within a reasonable time and to the satisfaction of the officers; is that right?

A. Yes; they had a right to call it on the ballot vote that was taken.

Q. So that the only real additional vote that was taken here was to combine the two agreements and to set the 23rd of Sepember dead line?

A. That is right.

Q. Why was September 23 selected as the date?

A. Well, a great many of the men felt that Mr. Tuel was giving us a run-around. Others felt——

Q. (Interrupting.) Mr. Tuel?

A. (Continuing.) Mr. Stone was giving us the run-around. Others present felt that as long as he had promised to play fair with us we should go ahead and play fair with him. I was one of those who felt that way, and I urged that Mr. Stone be given all the time that would be reasonable in which to study both agreements and sign them before any drastic action was to be taken. There was a great deal of discussion and I believe there may have been a canvass made of the membership to find out what date was to be set. The date of September 23, was finally selected.

259 Q. And you don't know of any particular magic in September 23, do you?

A. No; other than giving him a period of approximately ten days in which to study the agreements.

Q. But you said he did not have a copy of it with him here in San Francisco.

A. I don't know.

Q. He was in San Francisco the 13th?

A. Yes.

Q. When did he leave?

A. I don't know. I believe he stated he was going back to New York immediately.

Q. How many days does it take to get from San Francisco to New York by train?

A. I don't know, around five days.

Q. Five days approximately. If he left the next day, September 14, he would get there when—September 19, wouldn't he? And you thought four days was sufficient time for him to examine this contract and make up his mind about it?

A. Inasmuch as Mr. Stone only asked us for bare time to arrive at his office at New York, I think it was generous on the part of the union men to give him additional time until September 23.

Q. Were those his words?

A. Repeatedly.

260 Q. "Bare time" to get to his office?

A. Yes, sir.

Q. How long was this agreement?

A. Between 20 or 30 pages, I imagine.

Q. Do you think you could make up your mind about an agreement——

Mr. EDISES. (Interrupting.) I object to this.

Trial Examiner EICKHOFF. Objection sustained. You are getting a little argumentative now, Mr. Merrick.

Mr. MERRICK. Argumentative?

Trial Examiner EICKHOFF. Yes.

By Mr. MERRICK:

Q. Do you know what day of the week September 23 was on?

A. No; I don't.

Q. What day of the week was September 13?

A. I have a calendar in my pocket. I will look it up if you would like to know, but I won't venture a guess.

Q. Suppose you look and see what it is.

A. (Looking at calendar.) September 13 was a Friday.

Q. What was September 23?

A. September 23 was a Monday.

Q. And if he left on Monday and got there on the 19th, what day of the week would that be?

Trial Examiner EICKHOFF. I don't think you need to ask the witness these questions.

261 Mr. EDISES. I fail to see the bearing.

Mr. MERRICK. The Examiner himself made a point about having given Mr. Stone a long period of time, and the witness said he was very generous.

Trial Examiner EICKHOFF. You have everything now to draw a conclusion. You don't have to ask him how long or what day.

Mr. MERRICK. Do you permit the question on what day of the week the 19th was on?

Trial Examiner EICKHOFF. I think we could all take notice of that. However, if you wish, please look at your calendar.

A. Thursday.

By Mr. MERRICK:

Q. So, after he got to his office Thursday, you had to give him notice——

Mr. EDISES. (Interrupting.) I object to this line of questions, Mr. Examiner, this speculation on the length of time it might have taken to get from San Francisco to New York. He might have flown, he might have telephoned, there were any number of ways he could have got——

Mr. MERRICK. (Interrupting.) He couldn't have telephoned.

Trial Examiner EICKHOFF. I don't think you are bringing out any evidence.

Mr. LIVINGSTON. I don't think there has been any brought out since the thing started, myself.

262 Trial Examiner EICKHOFF. All the more reason why you should follow the objection which you have made, and continue along those lines.

Mr. MERRICK. If you permit me, I asked to have all this testimony struck out, saying unless it were struck out we would have to have a lengthy cross examination on it. You chose to leave it in. It seems to me you have to bear with me on the cross examination.

Trial Examiner EICKHOFF. Very well, but I think it entirely unnecessary to ask how many days there are in the week, and things of that sort.

Mr. MERRICK. He said he was very generous.

Trial examiner EICKHOFF. That is a matter of argument.

Mr. MERRICK. That is what we are developing.

By Mr. MERRICK:

Q. According to what you have already said, it is true that if he had left the very day after the meeting and had gone back by train, he would have just had one business day in his office before he had to give the final word?

A. No.

Q. What other days were there?

A. He had from September 23 on into indefinitely.

Q. But your dead line was September 23?

A. Our dead line when our officers were authorized to take
263 action against Mr. Stone. There was a period of time granted

Mr. Stone to travel between San Francisco and New York and confer with our officers in New York.

Q. And if he had not agreed with them by September 23 to sign those contracts, then they were authorized to call a strike?

A. If the officers——

Q. (Interrupting.) Just answer that yes or no. You testified to it.

A. What question?

Q. If Mr. Stone did not agree to sign these two agreements on September 23, your officers, by virtue of the vote taken at the September 13 meeting, were authorized to call a strike?

A. That is right.

Q. And the only business day he had in which to confer with your representatives and with his associates, to study the agreement, was the previous Friday and the Monday on which he had to give his final decision?

A. Our officers were to call a strike in their discretion.

Q. But as far as the resolution was concerned, they had the power to call it on September 23?

A. They had.

Q. You think that was generous?

A. Very. He asked for four days and he got ten.

Q. And was the action taken at this meeting September 23 posted on the bulletin board in the usual way?

264 A. Yes.

Q. Do you know whether any other people came and asked to have their vote recorded one way or the other on this vote?

A. Yes; each employee of the Mackay Radio was personally solicited by the committeemen of both committees, and by the secretary of the local, and by interested union men, and their signatures were placed under the minutes of this meeting showing their approval, disapproval, or silence.

Q. What was the final vote, do you know, on this?

A. The final vote—how many?

Q. Yes; how many, for or against?

A. I don't know how many for—there were perhaps 54, or 52, three, four, against, and one silent.

Q. And that constituted the entire membership?

A. Yes.

Q. Of those eligible to vote?

A. Yes.

Q. Add those up. That makes around 59 at the outside. Didn't you testify earlier that there were 60 or 80 at the meeting?

A. Yes; I also testified it was a joint meeting.

Q. Yes; weren't all the members of the union who were either marine or point to point entitled to vote on this question?

A. The marine men, as far as I know, had no provisions in

265 their organization where a man can vote, if he is not present at the meeting. Our organization does have a provision where no motion is considered carried until 24 hours have elapsed after the

vote taken of those in attendance. During this time this man is entitled to place his vote—"Yes," "No," or silent——

Q. (Interrupting.) Of the point to point men?

A. Yes; in the San Francisco office.

Q. You don't know anything about the vote of the marine men?

A. It was taken in my presence at the meeting.

Q. What was that?

A. I believe it was carried unanimously by all those in attendance at the meeting.

Q. That is, after the joint meeting you voted separately?

A. The Mackay men voted separately whether or not to place the two agreements jointly simultaneously.

Q. I thought they were all Mackay men.

A. The point to point Mackay men voted whether or not to place the agreements in joint action before Mr. Tuel and Mr. Stone. They voted, and it was carried that they would place joint action.

Q. On the question of the authority to call a strike, was there a separate vote of the marine men and point to point men?

A. The marine men could not go on strike. They took a
266 separate vote on a boycott in the event a strike was called by the Mackay men.

Q. Was that taken at this meeting?

A. I don't recall.

Q. At a later date?

A. I don't know.

Q. Did you vote on that question?

A. I am not authorized to vote on the marine——

Q. (Interrupting.) Oh. Just the marine boycott?

A. Yes. Ours was a strike vote.

Q. I am passing now to the evening, October 4. You said that you received notice from Mr. Bash that the New York Local had voted to call a strike, and that Mr. Salisbury had recommended that the San Francisco Local also strike; is that correct?

A. That is correct.

Q. Did Mr. Salisbury call a strike—a nation wide strike—of the Mackay Radio men?

A. I wouldn't know that. I was working at that time.

Q. Who did call a strike?

A. I wouldn't know that.

Q. You wouldn't know it; but do you know it?

A. I don't know.

Q. You don't know who called a strike October 4?

A. No.

267 Q. Do you know there was a strike?

A. I know there was a strike. I know we voted to strike.

Q. At this September 13 meeting?

A. Yes.

Q. That is, you authorized the officers to call a strike?

A. I was notified by our local secretary we were to strike.

Q. Did anyone ever tell you that the officers called a strike?

A. I have previously stated that Mr. Bash said that Mr. Salisbury said that the New York local had voted to go on strike, and he recommended that we were to go on strike at 12 midnight October 4.

Q. Did Mr. Salisbury have authority to call a strike, other than anyone else of the local here?

A. I wouldn't want to answer that. I don't know.

Q. Do you know who called the strike at the other points operated by the Mackay Radio Companies?

A. The ARTA is the rank and file organization. To call a strike a vote must be taken. If a vote is taken and placed in the hands of any individual, that individual would have the right to call a strike. The point to point local of the Mackay Radio had already placed in Mr. Salisbury's hands a resolution to vote September 13, giving Mr. Stone until September 23 in which to meet with the officers of our organization; and if they deemed it necessary,
268 any time after that date they could call a strike. Any officer of the organization could call a strike, theoretically.

Q. You said the telephone conversation that Mr. Bash repeated to you was merely that the New York local had called one and that Mr. Salisbury had recommended that San Francisco ought to go on strike?

A. Mr. Bash was passing the information on to me. This was not a quotation; it was merely a statement of fact of conditions that existed at that time. That was around 10 o'clock October 4.

Q. Did you understand that by virtue of Mr. Salisbury's action in New York a strike was effective here in San Francisco—effective at midnight that night?

A. Inasmuch as the secretary of the local had advised me that the strike was to be effective at midnight at that time, that was my only interest in it.

Q. What were your hours of duty at that time? On what shift were you?

A. I was assigned to the trick from 8 until 4. However, I made a swap with one of the trans-Pacific men, and at that time was working from 4 until 12.

Q. Did you go on duty that night at four?

A. Yes.

Q. Were you there until midnight?

A. Yes.

Q. By that time all the other people that were on this shift had been informed that the strike was effective at midnight?

A. Yes.

269 Q. Then you walked out at midnight?

A. Yes.

Q. And went to the Arta Hall?

A. No; the men from the Arta Hall come over to the Postal Telegraph Building and were downstairs when we went out.

Q. Who selected the strike captains?
A. I wouldn't know; I wasn't at the meeting.
Q. Did you serve as one; and if so, who selected you?
A. Yes; but I don't know who selected me.
Q. How were you selected?
A. I presume by the membership.
Q. Who told you you were a captain?
A. Secretary——
Q. At the meeting that night—you presume that a meeting had taken place?
A. I knew that a meeting was going on that night; yes.
Q. At 8 o'clock, that is the usual hour, is it?
A. That is the usual hour for it, but the first official notice that a strike was to be called was at 10 o'clock that night.
Q. While you were on duty?
A. Yes.
Q. You said Mr. Bash told you about it?
A. Yes.
Q. Mr. Bash was the only one who had told you you were a strike captain?
270 A. No; Mr. Palmer also discussed with me the hours, the hours that were arranged, and how I was to work.
Q. What were your duties as a strike captain?
A. I was not only to picket, take charge of the pickets, and see that the building was correctly picketed——
Q. (Interrupting.) What were you to do to prevent anybody from going in and out?
A. My duty as a picket was to—was to challenge any one whom I knew——
Q. (Interrupting.) To do what?
A. Anybody whom I knew was an operator, to advise them a strike was in progress, and if they worked at this time for Mackay, they would be a scab. My duty as a union man was to get any person who had gone in to sign up in the organization.
Q. Were you authorized to use force to prevent anybody from going in and out?
A. No.
Q. Did you at any time use any force?
A. No.
Q. You testified that you were on duty at 6 o'clock Sunday night in the picket line; is that right?
A. I don't believe I was there at 6—slightly prior to 6 o'clock. I went to dinner at that time.
Q. You testified having a conversation with some one who was
271 going in and you tried to persuade him not to go in. Do you remember about that?
A. I don't recall testifying as to trying to persuade who was going in. However, I did try to persuade several not to go in.

Q. You said that you told some one, when asked whether he was going to join the strikers or not, when he said he hadn't made up his mind, that it might be too late if he didn't decide before 6 o'clock Sunday night.

A. That is true.

Q. Do you remember that?

A. Yes.

Q. Too late for what?

A. Too late to be taken into the union, and in the event we won the strike, he would be out.

Q. That is, if he didn't join the union before 6 o'clock?

A. We would consider him a scab.

Q. And if the strike was successful, he would not get a job?

A. That is right.

Q. No matter how good an operator he was?

A. A scab and an operator, that doesn't matter. If a man is a good operator to a union man, he is not an operator if he is a scab.

Q. So it wouldn't make any difference how good an operator he was?

A. If he were a scab, he wouldn't get a job if we won the
272 strike.

Q. You said that other strike captains were Loudermilk, Palmer, and Bash. Do you remember any others?

A. Not at this time.

Q. Doesn't it seem peculiar to you that every time you are asked about how many people were there, or who they were, the only people you can remember each time are these four people?

A. They were the four who were the most active in the organization and the ones whom I had deals with. Naturally, whenever I had any deals I had to mention the names.

Q. Were they your closest friends?

A. No.

Q. Were any of your close friends on picket duty?

A. All the members of the organization went on picket duty, and naturally a good many of them were my friends.

Mr. EDISES. I want to object to that question, and ask that the answer go out. I fail to see who was on the picket line has any relevancy.

Trial Examiner EICKHOFF. It is now in; I'll leave it in.

Mr. EDISES. The question has not been answered yet.

Trial Examiner EICKHOFF. Mr. Reporter, is there a question unanswered?

The REPORTER. No; Mr. Examiner.

273 (The Reporter read aloud the last question and answer as above recorded.)

Mr. MERRICK. There is no question unanswered.

Mr. EDISES. I object to any further questions along this line. I fail to see the relevancy of it.

Trial Examiner EICKHOFF. Evidently Mr. Merrick is testing the credibility of the witness.

Mr. EDISES. We don't know what his object on this point is.

Trial Examiner EICKHOFF. It seems to me that the witness has satisfactorily explained how he happened to mention these names, so that is water under the bridge now.

By Mr. MERRICK:

Q. You can recall other names besides these four, of men whom you saw on picket duty?

A. Yes; I can recall the names.

Mr. EDISES. Mr. Examiner, I am going to object to this line of testimony. I don't see that it has any bearing on the issues here; and frankly, some of the men are afraid that if they gratuitously and unnecessarily bring out the names of men who were active in this strike, that it may possibly result in some unfavorable action on the part of the company. That has been expressed to us, and we feel, in view of this possibility (I am not saying it is a probability) that any unnecessary mention of names, where the mention of those
274 names is not relevant and necessary, it ought to be excluded.

Mr. LIVINGSTON. Well, if that happens, for once they have really a case, so I should think they would welcome the possibility.

Mr. EDISES. We prefer not to.

Trial Examiner EICKHOFF. Do you desire to pursue this line of examination further?

Mr. MERRICK. Slightly; yes.

Trial Examiner EICKHOFF. We went into the question of the activity of the pickets, and who they were, very thoroughly on direct examination, and accordingly the respondent must be allowed the privilege of cross examination. So far as the other consideration is concerned, I don't see that it is one I can recognize in this hearing.

Mr. EDISES. I want to point out that he has answered that question, when he said all the members of the organization were on strike and were on the picket lines. I think that is sufficient, without mention of specific names.

Trial Examiner EICKHOFF. If all were included, then there is no harm in mentioning one or two names.

Mr. EDISES. I feel there is an objection. He has asked who Mr. Rone's closest friends were on the picket lines.

Trial Examiner EICKHOFF. Well, I think that question might
275 be objectionable. I don't think it is a matter of who were his close friends.

Mr. MERRICK. That isn't the pending question, except the names of the some of the men who were on picket duty.

Trial Examiner EICKHOFF. I'll allow that question.

A. You want to know the men who were on my watch?

By Mr. MERRICK:

Q. Just name some of the other names besides the names of the men whom you mentioned on examination.

A. Mr. Dyer was on my watch; Mr. Hatch; Mr. Jones; Mr. Burtz—shall I go ahead and name the entire personnel?

Q. Was Mr. York there?

A. I didn't see Mr. York.

Q. Do you know whether he was on duty or not?

A. If he was on, he was probably on some other watch.

Q. Do you know whether he was on picket duty?

A. All the men were on picket duty.

Q. So you are quite sure he was on?

A. Quite sure, yes.

Q. You said that the reason why—the reason why the only persons you mentioned by name on direct examination were Loudermilk, Palmer, and Bash was because they were most active; Is that correct?

A. Because they were the most active, and the ones that it was necessary to meet in committee with.

Mr. EDISES. Mr. Examiner, I should——

276 Trial Examiner EICKHOFF. Any objection?

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. Does that assume something? Were those the only names he has mentioned?

Mr. MERRICK. Those were the only ones on direct examination.

Trial Examiner EICKHOFF. It seems to me he has named others besides those.

Mr. MERRICK. If you want a discussion on the point and the reason why I am interested in this testimony, I, unlike my adversary, I am perfectly willing to tell you.

Trial Examiner EICKHOFF. Is the question correct, in view of the evidence?

Mr. MERRICK. My question was in regard to his direct examination.

Trial Examiner EICKHOFF. Yes.

Mr. MERRICK. And that those were the only four whose names he mentioned when he was asked on direct examination as to who was on picket duty. He said simply "and others." I am trying to find out what particular reasons he had in selecting just those four in answer to the question.

By Mr. MERRICK:

Q. Is that substantially correct? Is the reason why you mentioned only those three others was because they were the most active?

A. Because they were the strike captains, and I conferred

277 with them throughout the day.

Q. They were the only strike captains with whom you conferred?

A. The only ones I know of.

Q. Do you remember that at no time there were more than four in any group that you conferred with?

A. More than four strike captains—yes.

Q. You don't know how many there were all together?
A. No; I wasn't at the meeting.
Q. You said that before. You have lots of knowledge about what took place when you weren't there. You never heard anybody say how many captains there were?
A. No.
Q But you are quite sure there were more than four?
A. There may have been more than four.
Q. And there might not have been more than four?
A. There might not have been.
Q. Was Mr. York active on picket duty?
A. I didn't see him, but I am quite sure he did do picket duty.
Q. You testified that on Sunday, October 7, you went with Mr. Phelps and Mr. Clifford to call on Mr. Layman and Mr. Buckley; is that correct?
A. On Sunday, yes. I don't know whether the date is correct or not.
278 Q. It may not be correct?
A. Shall I look on the calendar?
Q. Yes. I believe it is the 6th.
Mr. LIVINGSTON. You might leave that calendar out, it will save lots of time.
A. Sunday, the 6th.

By Mr. MERRICK:

Q. Did you have instructions to go down there to see them?
A. No.
Q. You just went down to get them to sign?
A. Yes.
Q. What arguments did you use with them, the same ones that had persuaded you to join the union?
A. I didn't need to make any arguments. They were both very willing to sign. I handed them a blank and a pencil.
Q. You said some time ago that you were not very friendly with Mr. Layman.
A. Since Mr. Layman has been relieved of the job of chief operator, there has been no great feeling between us one way or the other.
Q. You were quite willing to have him as a brother?
A. Yes. I thought if he would be willing to be a good union man, there was no reason why he should not be accorded the benefits of it.
Q. He wasn't as enthusiastic as Mr. Buckley?
279 A. No.
Q. Mr. Buckley, you said, was very enthusiastic?
A. Very enthusiastic.
Q. Hadn't he ever heard about the union before?
A. He spent a good deal of his time behind my chair while I was employed, trying to tell me the benefits of unionism, and how he had seen the benefits of unionism in his native Ireland; and I was of the opinion that he was a good union man. That was unsolicited on my part.

Mr. LIVINGSTON. Can we stipulate to that Buckley would be against everything? He is bound to be against these.

By Mr. MERRICK:

Q. Did you ever ask him to join the union before this evening?

A. Not directly. I asked him several times if he would join if certain other parties would join.

Q. What had he said to that?

A. He always evaded joining.

Q. He had never been enthusiastic before this Sunday?

A. Yes; he had been an enthusiastic booster for unionism, but said it wasn't for him.

Q. Did he give you any reasons on Sunday night why he suddenly decided that unionism was such a delightful thing for him?

A. Yes; he thought we were winning the strike and he was
280 going to be out of a job.

Q. You told some one if you did win the strike, he would have to join the union or lose his job?

A. That is the same party.

Q. Not the same one I questioned you about? You testified on your direct examination of having told somebody that.

A. That was Mr. Buckley who come down to ask if Mr. Bill Kane would be permitted to leave the building, and one of the men asked him at that time why he didn't come out too, and he said he may later.

And I told him that probably after 6 o'clock it would be too late for him, he might as well stay up there and be a scab. We would give him until 6 o'clock.

Q. Did you threaten him with any violence in case he didn't join the union?

A. None.

Q. Neither impliedly nor directly?

A. None.

Q. What did he do to join the union that night, Sunday, in his home?

A. He grabbed the application and pencil, and without giving me any information—I said, "Wait a minute." He swore he wanted to be a good union man so he put down all the information that was necessary, on the blanks. I asked him for the money and he
281 back-tracked on the money, but he finally consented to give us a check. The check was for $6, and I understand it bounced. [Laughter.]

Q. Who told you that it bounced?

A. Mr. Bash, the secretary of the Local, the acting secretary of the Local.

Q. What do you mean by bounced?

A. Just wasn't paid.

Q. Wasn't paid?

A. Yes.

Q. Have you ever had a check come back unpaid? I don't mean one of your own.

Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. I sustain the objection.

By Mr. MERRICK:

Q. Do you know the procedure in banks when a check is returned, whether they attach a slip to it and note the reason why it is unpaid?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

Q. Will you explain what you mean exactly by the term "bounce"?

Mr. EDISES. I object to that as already asked and answered.

Trial Examiner EICKHOFF. I'll allow that question.

A. I meant the check——

282 Mr. MERRICK. (Interrupting.) Since we don't follow technical rules, will you permit me to ask a question?

Trial Examiner EICKHOFF. Yes.

By Mr. MERRICK:

Q. Do you know the check was unpaid? Had payment been stopped, or were there no funds?

A. No; Mr. Bash merely told me in general discussion that the check he gave us bounced.

Q. He didn't say whether or not—what had been the reason for its coming back, and you don't know?

A. No.

Trial Examiner EICKHOFF. Are you gentlemen nearly through with this witness?

Mr. LIVINGSTON. Yes, pretty soon.

By Mr. MERRICK:

Q. I should like to pass on to the meeting now. You say it was a very informal meeting, Monday, October 8, at the ARTA headquarters?

Mr. EDISES. Monday, October 7.

A. Yes; I recall that.

By Mr. MERRICK:

Q. You said that was not a formal meeting?

A. No; just a gathering.

Q. You said you remember seeing Mr. McLaughlin there reading from some kind of paper; is that right?

A. Yes.

Q. You said you saw the name of Mackay Radio on it?

283 A. Yes; he held it up for us to see it.

Q. Did you know where he got it from?

A. No, I don't.

Q. Was it in the form of a telegram?

A. No; it was a letterhead over the signature—he said that it was over the signature of Mr. Watkins of the Lobitas Station. That was when he was asked by—by one of the operators, I believe, Mr. Barlow—where his source of information was.

Q. Did he say to whom it was addressed?

A. No.

Q. He didn't explain how he got hold of it?

A. No.

Q. You don't know anything about that?

A. No; when we found out where his source of information was, with so many quotations, we all laughed at him.

Q. That source being?

A. Mackay Radio.

Q. Some of the officers of the company, you mean by that?

A. Yes.

Q. In San Francisco or New York?

A. The source of the information we gathered was Mr. Watkins in Lobitos.

Q. How would he know about conditions in New York?

284 A. Every one who stayed in at Mackay Radio gave us various bum stalls and steers on what was occurring in our own organization.

Q. What was Mr. Watkins' position?

A. I previously stated that, I believe, he is in charge of the Lobitos Station.

Q. How many men does he have under him down there?

A. I don't know.

Q. Ever been down there?

A. Yes.

Q. How many men did you see around there when you were there?

A. Three.

Q. You don't know from your long association with the company how many men was the regular staff down there?

A. No; they may have had men down there checking frequency down there.

Q. I am talking about regular employes.

A. I wouldn't know exactly.

Q. You don't know?

Trial Examiner EICKHOFF. I think he said that about three times.

Mr. MERRICK. He said "I wouldn't know."

Trial Examiner EICKHOFF. He said, "I don't know" three times, if I remember.

Mr. MERRICK. He may have conveyed that impression. I

285 don't think he gave that language.

By Mr. MERRICK:

Q. At any rate, you said that the men weren't deceived at all by the contents of this message that Mr. McLaughlin had there?

A. Not when we found out what they were quoting from.

Q. You found that out very shortly after he waved it in front of you at the same general gathering?

A. Yes; at that gathering, after a period of half an hour of argument he finally admitted where the information came from.

Q. Now you said that the next day, Tuesday, you spent the day investigating various people to see whether they were on duty, is that right—trying to get additional people to join the union?

A. The next day? Tuesday? The strike was called Tuesday the 8th, wasn't it?

Q. The dates that you used on your direct examination were not altogether clear sometimes. There were times when you said one day when you meant another. This meeting we have just been talking about was on Monday, wasn't it?

A. Yes.

Q. After that meeting you said you went home to bed?

A. Not after that afternoon meeting. After the night conversation I went to bed.

Q. Was there a formal meeting?

286 A. No; just a gathering.

Q. No vote taken at that time?

A. No; no vote taken.

Q. You left the union hall about what time?

A. Between 11 and 12.

Q. And went home then?

A. And went home.

Q. Has this strike ever been called off?

A. Officially, I don't know, other than that the newspapers stated that Mr. Rathborne had said the strike was off. I don't remember the wording.

Q. No official action has ever been taken by the San Francisco Local that you know of?

A. Not that I know of.

Examination by Trial Examiner EICKHOFF:

Q. Was there any official meeting of your union between the time of the calling of the strike and since that you have not attended?

A. I haven't attended but one meeting since the strike was called, because the meetings were called at ten o'clock in the morning and I was on picket duty at that time. I have since attended one general meeting of the organization.

Q. Did you attend any meeting in which the strike was called off?

A. No.

287 Mr. LIVINGSTON. Does the Examiner still intend to adjourn at 4 o'clock.

Trial Examiner EICKHOFF. That was my intention unless, for some special reason we continue.

Mr. EDISES. Mr. Examiner, if Mr. Merrick hasn't a great deal more to ask this witness about, I suggest that we just take a few days. At this rate we will be there for two weeks.

Mr. LIVINGSTON. Well, now, if the Examiner please, suppose you say that to the other side.

Mr. MERRICK. I may take half an hour more with this witness.

Trial Examiner EICKHOFF.

Mr. MERRICK. Possibly half an hour.

Trial Examiner EICKHOFF. Then I think we had better adjourn until ten o'clock tomorrow morning.

(Whereupon, at 4:00 o'clock p. m., December 3, 1935, hearing in the above-entitled matter was adjourned until 10:00 o'clock a. m., Wednesday, December 4, 1935.)

288 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Wednesday, December 4, 1935.

Met pursuant to adjournment at 10:00 o'clock a. m.

PROCEEDINGS

Trial Examiner EICKHOFF. Are you ready, gentlemen?

Mr. EDISES. Ready.

Trial Examiner EICKHOFF. Are there any preliminary matters this morning, or are you ready to continue with the witness?

Mr. MERRICK. I understood you were going to present some motion this morning.

289 Mr. EDISES. This can be off the record.

Trial Examiner EICKHOFF. Off the record.

(Discussion off the record.)

Trial Examiner EICKHOFF. You may proceed

LON N. RONE, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Cross examination by Mr. MERRICK:

Q. Do you remember your activities on Tuesday, October 8?

A. Yes, sir.

Q. You said you investigated all day, didn't you?

A. I went to the union hall in the morning; yes, sir; then later in the afternoon I went to the union hall to find out just what had occurred.

Q. When did you first find out what had occurred?

A. Mr. McLaughlin was the first one that told me exactly what occurred.

Q. What time was that?

A. Around 7 o'clock in the morning.

Q. He told you that the men had gone back to work, some of them?

A. He told me that the men had gone back to work and that I was on the black list; yes.

Q. And you didn't apply for your job again until the
290 following day at some time after 3:30 in the afternoon; is that right?

A. I believe that is right—that I applied the following day around 3:30, the 9th.

Q. Then you said you went home, didn't you? You went home Tuesday? You didn't stay around the building, did you?

A. No, sir.

Q. When did you first hear about the meeting that you testified to that took place down on the 6th floor?

A. I am not sure, but I think it was the 9th or it was the 10th; in any event, I was in the operating room to see Mr. Jorgensen, and I was advised by Mr. Poy that there was to be a meeting like this, and he asked me to come. I told him I didn't have anything in common with the scabs and didn't want to hear them. He said there might be something to my interest to be there, so I went to the meeting.

Examination by Trial Examiner EICKHOFF:

Q. This meeting was after the men had gone back to work?

A. Yes, sir.

Q. What was your understanding of the nature of that meeting?

A. Well, Mr. Poy said that the scab, McDonough, had something to tell the men that showed that we had been misrepresented in
291 New York and he thought that I should be there to hear it.

Q. I mean, was this an ARTA meeting?

A. No, sir; a scab meeting.

Q. What do you mean by a "scab meeting"?

A. The New York scabs; and Mr. McLaughlin called the meeting.

Q. That is what you were told by whom?

A. By Mr. Poy.

Q. By Mr. Poy?

A. Yes, sir.

By Mr. MERRICK:

Q. Did Mr. Rathborne tell about that meeting, to your knowledge?

A. Not to my knowledge.

Q. He said Mr. Rathborne advised you to go back to work; is that so?

A. That is true.

Q. When did he first advise you to go back?

A. I believe it was on the morning of—I know definitely it was the morning—the day that the Lobitos transmitter men went back to work.

Q. Was it the day that you did apply for your job or the day before?

A. It was the day I applied for my job.

Q. The morning of Wednesday the 9th?

A. He told me in the morning, and I told him that I
292 didn't think that it was right for me to dash back to my job until all the men had made application to go back to their job.

Q. That is, you, of your own volition, waited until you were sure every one else had applied?

A. That is right.

Trial Examiner EICKHOFF. To your knowledge, did the men go back to work, those who did, as a result of the ARTA meeting?

The WITNESS. No, sir; they went back to work as the result of the meeting held in the Bellevue Hotel, which could be termed a Mackay Radio meeting.

Mr. LIVINGSTON. We ask that that go out as an opinion and conclusion of the witness.

Mr. MERRICK. He means by that simply a meeting of the employes of the Mackay Radio; isn't that correct?

The WITNESS. I have been informed that Mackay Radio paid for the rooms up there. If that is the case, it was certainly a Mackay Radio Company meeting.

Mr. LIVINGSTON. We ask that it go out, unless it is limited.

Trial Examiner EICKHOFF. That last answer may go out.

Mr. LIVINGSTON. I think the description should go out, unless it is limited as merely identification.

293 Trial Examiner EICKHOFF. He said "which may be termed"—there is no harm in that.

Mr. LIVINGSTON. All right.

Examination by Trial Examiner EICKHOFF:

Q. What I was getting at was this: As far as the ARTA was concerned, the strike here just sort of disintegrated and went to pieces and the men went back to work?

A. Yes, sir.

Q. No official action to your knowledge——

A. (Interrupting.) None.

Q. (Continuing.) Calling off the strike?

A. No.

By Mr. MERRICK:

Q. When did you arrive at this meeting on the 6th floor on the 9th day of October, do you remember?

A. I should judge very close to 4 o'clock, just a few minutes before.

Q. You said that Mr. McLaughlin was presiding and that thirty to forty were present?

A. Yes, sir.

Q. Which is the number you said was the ordinary attendance at ARTA meetings, is that correct?

A. Yes, sir.

Q. You said there were present at the meeting operators and
294 scabs. How many of each? How many scabs did you see there?

A. Between five and seven scabs, and the rest were operators of the Mackay Radio, San Francisco.

Q. Was Mr. Loudermilk there?

A. No, sir.

Q. Mr. Palmer?

A. No.

Q. Was there any other person present there that wasn't then back on duty?

A. None that I know of.

Q. But Mr. Poy had told you that he thought it was to your interest to be there?

A. Yes, sir.

Q. Was Mr. Bash there?

A. No, sir.

Q. Or Mr. Salisbury?

A. No, sir.

Q. All that you heard transacted at the meeting was a report by Mr. McDonough as to what had taken place in New York, and a statement, you said, by Mr. Jorgensen, that he wasn't sure, but he believed that all of those from out of town were going back?

A. I heard more that I didn't recall at the time of the testimony.

295 About the time the meeting was to break up, Mr. McLaughlin said to the men, "Well, what we are here for is to find out whether we should start another association of our own at this time, or later."

The men, three or four of the men, said, "I think later would be a better time."

I said to Mr. McLaughlin, I said, "I would like to take the opportunity at this time to start an association with a move-of-Salisbury-back-to-work program," and all the men voted to back him up and go back to their jobs.

Mr. McLaughlin said, "This is a company meeting, and if you want to take up ARTA matters, get to hell out of here and go to the ARTA Hall."

Q. That is all that you recollect about the meeting?

A. At this time, yes.

Q. You made special mention of the fact that Mr. York told you that these men who were present at the meeting weren't docked?

A. I made special mention of the fact that Mr. York told me he was not docked.

Q. You presumed from his statement that the others weren't docked, didn't you?

A. I didn't presume anything from it.

Q. All right. Did you think the men should have been docked?

A. If the men were attending a meeting for the purpose of
296 breaking up the ARTA, they should have been docked; yes, sir.

Q. They should have?

A. Yes.

Q. But if they were attending a meeting to further the purposes of ARTA, what about it then?

Mr. EDISES. I object to that line of questioning. I fail to see the relevancy of it. It is calling for the speculative opinion of this man and has no particular bearing upon any of the issues of this case.

Trial Examiner EICKHOFF. You mean "should have" with reference to the company regulations?

Mr. MERRICK. For some reason or other, counsel for the Board seeks to emphasize continually that the men weren't docked, and he evidently thought it was quite relevant testimony.

Mr. EDISES. Let us establish the fact whether they were or not.

Mr. MERRICK. All the evidence that you put in through this witness was that they ought to have been. If you thought it wasn't relevant, why did you put it in?

Mr. EDISES. It was relevant. I wanted to establish the fact.

Mr. MERRICK. I disagree with you. You know you cannot establish a fact that——

Trial Examiner EICKHOFF. (Interrupting.) Anything more
297 along this line?

Mr. MERRICK. I just want to get an answer to these questions to show that the men were never docked when they were attending meetings; get the answer from this witness.

Trial Examiner EICKHOFF. You haven't developed that through this witness.

Mr. MERRICK. The last question approaches it. I want to ask him what the practice had been, to his knowledge.

Has the last question been answered?

The REPORTER. No.

Mr. MERRICK. Do you want to answer that?

Mr. EDISES. Read the last question back, please.

(The pending question was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. I will disallow that question and ask counsel to reframe it with reference to what had actually taken place.

Mr. MERRICK. I think, Mr. Examiner, in view of the fact that you permitted, on direct examination, this witness to testify to what should have been done, that I should be permitted to ask him on cross examination what should have been done.

Trial Examiner EICKHOFF. That is not my recollection of the record.

298 Mr. MERRICK. I made a note of it, and that is the reason we objected to the question. He said these men should have been at work.

Mr. EDISES. I didn't ask the question.

Mr. LIVINGSTON. That is the testimony of this witness, if I may be permitted to interrupt. He said these men should have been at work, and if they weren't at work, they should have been docked. That is the testimony, substantially. There should be the right given to cross examine on it.

I will take a ruling.

Trial Examiner EICKHOFF. That is all right if it is with reference to some company regulation, but asking him for his personal opinion, I will disallow the question.

Mr. MERRICK. You refused to exclude it on direct examination.

Trial Examiner EICKHOFF. You will have to show me that in the record before I will believe it.

Mr. EDISES. Why not ask whether he attended ARTA meetings on company time?

Mr. MERRICK. I shall, but you asked for opinion testimony, and I was getting a little more opinion testimony.

Trial Examiner EICKHOFF. Proceed.

By Mr. MERRICK:

Q. You testified that you were on various committees of ARTA, didn't you?

A. Yes, sir.

Q. And you spent quite a little time meeting with representatives of the management, didn't you?

299 A. No, not a great deal of time.

Q. How many meetings did you have?

A. Two or three.

Q. How long did they last?

A. Some of them ran on as far as three or four hours.

Q. Were you docked for the time you spent at those meetings?

A. As I recall it, I was off duty at the time.

Q. Do you know whether any of the other men were docked at the time they spent at their meetings?

A. My recollection is that we were all off duty at the time.

Q. Are you quite sure about it?

A. That is my recollection.

Q. Who were the others there—Loudermilk?

A. Yes, sir.

Q. Was he always on the same shift with you?

A. Not always; he used to get off earlier.

Q. Was he on the same shift as you on September 13, 1935?

A. I believe he was on from 6 to 2.

Q. 6 to 2—you mean 6 a. m. to 2 p. m.?

A. Yes.

Q. When did this meeting take place?

A. The meeting of September 13th took place at 4 o'clock.

Q. What were your hours that day?

300 A. 8 to 4.

Q. You just got through and came up to the meeting?

A. Right.

Q. What were Mr. Palmer's hours?

A. 8 to 4.

Q. And Mr. Bash, was he there too, at the meeting?

A. I believe his hours were the same.

Q. So you don't know of a single case where an operator attended a meeting between representatives of ARTA and the company when he took time off from his duties?

A. It may have been on September 13 that Mr. Bash was relieved by the company to go in. However, that wasn't on Mr. Bash's own doings. It was done at the orders of the company.

Q. I thought you said Mr. Bash was through at 4 o'clock?

A. Yes, sir; but he was in a few minutes before us. I don't know whether he was in five minutes to 4, or after 4 o'clock.

Q. Do you know of a single instance where a man was docked by the company for any time that he spent in attending any of these conferences?

A. No.

Q. Do you know of any occasion when any men were docked for time they spent attending any union meeting or committee meeting of your organization?

301 A. We didn't hold union meetings and committee meetings—if it was a committee meeting or a union meeting during those hours, he would have to take time off, and naturally he would be docked.

Q. Do you know of any occasion when he was docked?

A. I know——

Mr. EDISES. I object. He answered they never attended meetings on company time.

Mr. MERRICK. That is not his answer.

Trial Examiner EICKHOFF. I think that the question logically calls for the preceding answer.

Mr. EDISES. He answered it twice.

Trial Examiner EICKHOFF. I think we are in a little difficult ground. Would you like the questions and answers read?

(The last three preceding questions and answers were read aloud by the reporter as above recorded.)

By Mr. MERRICK:

Q. That is a simple question: Do you know of any occasion where a man was docked because he attended a meeting of ARTA, or anything else on company time?

A. I know of men who have men work for them while they are attending meetings.

Q. Answer the question "Yes" or "No," first. Do you know of any instance where any individual was docked by the company

302 by reason of the fact that he took time off duty to attend the meetings?

Mr. EDISES. I object to the question on the ground that it is assuming something not in evidence. I suggest that counsel first ask: Do you know of any instance where any man attended an ARTA meeting on company time?

Trial Examiner EICKHOFF. I will allow the question.

A. No.

Trial Examiner EICKHOFF. Let me ask you this: Do you know of any rule or regulation of the company in effect at that time, which either permitted or forbade a man to leave his trick and attend a meeting of the organization on the company's time?

The WITNESS. I know of no ruling on either side of the question.

By Mr. MERRICK:

Q. Are you familiar with the Wagner-Connery Act?

A. I have heard it.

Q. Do you know what is provided in that Act that is pertinent to this subject?

A. The company union; yes.

Q. About attending—the time used for attending meetings?

A. I don't know that part.

Q. You don't recall that?

A. No.

Q. You don't know whether it is provided expressly that
303 the employer shall be permitted to allow his employes to attend meetings on company time without docking?

A. I don't know.

Examination by Trial Examiner EICKHOFF:

Q. Was it the practice in the operating room for a man to get up and leave and attend a meeting any time he wanted to?

A. No, sir. It was the practice that if a man wanted to get to a meeting bad enough, he would hire one of the other operators to work in his place.

Q. At whose expense?

A. At the operator's expense. At no time were we permitted time off for anything of that nature.

By Mr. MERRICK:

Q. Did you ever request time off yourself?

A. No.

Q. Do you know of any case where any other individual requested time off?

A. No. However——

Q. (Interrupting.) That is sufficient. You said "No."

Mr. EDISES. I suggest that he be given an opportunity to explain his answer.

Trial Examiner EICKHOFF. Do you want to explain your answer?

The WITNESS. Yes. The idea of asking the company for
304 time to attend a union meeting, considering the attitude of the company toward the union, would be like committing suicide.

Mr. LIVINGSTON. We ask that the speech go out, as it is not an explanation and not responsive.

Trial Examiner EICKHOFF. You ask that the answer go out?

Mr. LIVINGSTON. No; the so-called explanation should go out because it is not responsive, and it is not an explanation.

Trial Examiner EICKHOFF. I have no objection to the explanation, although I think the language in which it is expressed is objectionable. It shows the attitude of the men toward leaving the work to attend union meetings.

Mr. LIVINGSTON. I don't think it is an explanation of the answer "No" which was to a factual question. He was asked for a fact, and he said "No." And then he was asked if he wanted to explain his answer, and that is not an explanation of a fact at all, but it is a diatribe, and we will ask that it go out, and take a ruling on it.

Trial Examiner EICKHOFF. It is an explanation to me, Mr. Livingston, and it will stay in.

Mr. LIVINGSTON. If that is the ruling, all right.

By Mr. MERRICK:

Q. Do you know anything about the attack that was made on Mr. McLaughlin?

305 A. No, sir.

Q. Nothing at all?

A. Not a thing.

Trial Examiner EICKHOFF. What attack was that, Mr. Merrick?

Mr. MERRICK. It will be put in evidence later.

Trial Examiner EICKHOFF. Let's put it in before we ask him about it.

Mr. MERRICK. You mean you want us to call the witness now on that?

Trial Examiner EICKHOFF. Has the witness testified about any attacks on Mr. McLaughlin?

Mr. MERRICK. No.

Trial Examiner EICKHOFF. Then I don't think it is proper cross examination.

By Mr. MERRICK:

Q. When did you first learn that men were being flown to San Francisco from New York and Chicago?

A. We received a telegram at the Union hall from Mr. Salisbury.

Q. Was any action taken at that meeting in regard to that?

A. I wasn't present when the telegram was received, and I know of no action that was taken.

Q. You don't know anything that was done by the union, or members of the union, in regard to those men coming?

A. No, sir.

306 Q. Did you go to the air field?

A. No, sir.

Q. Do you know of anybody who did?

A. No one.

Q. You don't know of any one?

A. No, sir.

Q. Do you know of any sources of income of your organization aside from the dues and initiation fees paid by the members?

A. I don't.

Q. Did it have any affiliation with the so-called Longshoremen's Union?

A. I wouldn't be able to answer that question.

Mr. EDISES. I object to that question, and request the witness not to answer. I fail to see that it is responsive to anything brought out on direct.

Trial Examiner EICKHOFF. Objection sustained.

Mr. MERRICK. I would like an answer to these questions, and as they are not strictly cross examination, I am willing to make the witness my own.

Mr. EDISES. I still object. I fail to see its relevancy.

Mr. MERRICK. You mean to say you object?

Trial Examiner EICKHOFF. There is nothing to argue about now.

307 Mr. LIVINGSTON. Will you permit us to ask a question and make him our witness?

Trial Examiner EICKHOFF. Not at this time.

Mr. MERRICK. You want us to call him later to ask him these questions?

Trial Examiner EICKHOFF. Yes.

By Mr. MERRICK:

Q. You have used the word "scab" considerable throughout your testimony. I take it you do not feel particularly friendly toward people that you designate as scabs, do you?

A. I do not.

Q. You feel they are pretty despicable?

A. It would take a lot of words to describe how I feel about a scab.

Q. You feel strongly——

Trial Examiner EICKHOFF. (Interrupting.) I will have to interrupt you if you intend to go further on this line.

Mr. MERRICK. Pardon?

Trial Examiner EICKHOFF. I will have to interrupt you if you keep probing the witness' feeling concerning scabs.

Mr. MERRICK. It is very relevant testimony.

Trial Examiner EICKHOFF. I disagree.

Mr. LIVINGSTON. Doesn't the Examiner permit us to prove bias at all on cross examination?

Trial Examiner EICKHOFF. I said no further questions
308 along this line.

Mr. MERRICK. I am going to ask a series of them, and if you want to exclude them, we will have it on the record.

Trial Examiner EICKHOFF. All right.

By Mr. MERRICK:

Q. There are still in the HB office a number of people whom you designate as scabs?

Mr. EDISES. I object to the question, Mr. Examiner.

Trial Examiner EICKHOFF. Objection overruled.

A. As far as I know, there are some there; yes.

By Mr. MERRICK:

Q. Would you think that you could go and sit at the same table, as close as Mr. Livingston and I are sitting, alongside of one of those men——

Mr. EDISES. (Interrupting.) I object to the question on the ground——

By Mr. MERRICK, continuing:

Q. And work efficiently and with a proper attitude toward your work?

Mr. EDISES. I object to that question, Mr. Examiner, on the ground that, in the first place he has testified that he finds scabs objectionable. It is simply prolonging a matter already covered in previous answers.

Trial Examiner EICKHOFF. Objection sustained.

Mr. MERRICK. I would like to give the Examiner every possible opportunity to make correct rulings, so I would like to explain a little further.

This witness has testified on direct examination that he
309 is anxious to get his job back; that he would like to go back to work. I want to show that he is not sincere in making that statement.

Do you, nevertheless, wish to exclude this line of examination?

Trial Examiner EICKHOFF. I think it is too speculative.

Mr. MERRICK. Speculative?

Q. You testified that you are anxious to go back to work, didn't you, at the HB office?

A. I did.

Q. And you have said you that you have very strong feelings of antipathy toward scabs?

A. I did.

Q. And yet you would be willing to go back and sit alongside of a scab in the operation of a circuit?

A. Necessity makes it that it would be necessary that I do that. I could do it; I wouldn't like to do it, but I could do it.

As to my ability as an operator, I can only quote the statement of Mr. Jorgensen that he would say to any one, if I was not the best operator he had in the office, I was one of the best. There would be no question as to my ability if I was returned to work.

Q. You testified on part of your examination that one of the
310 complaints that you had made was that one of the men working on the same circuit with you was making errors and you were getting the blame for it, is that true?

A. I didn't say "errors." I explained one error.

Q. But it is possible, isn't it, where two people are working on the same circuit, for one of them to make it very hard for the other one?

Mr. EDISES. I object to the question on the ground that it is hypothetical and speculative, and calling for his opinion as to some matter not in issue, and not particularly relevant.

Trial Examiner EICKHOFF. I will allow that question.

A. Not without the cooperation of the supervisor or the chief operator.

By Mr. MERRICK:

Q. You mean the supervisor would come around and prevent it?

A. If he came around and aided the man to make it hard on another man, it could be done.

Q. But without the aid of a supervisor one man couldn't make it hard for the other?

A. No, sir.

Q. And you think that you could sit alongside of a scab eight hours a day and control your feelings toward him?

Mr. EDISES. I object to that line of questioning.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

311 Q. Was there a boycott on Mackay Radio ever voted by Local No. 3, to your knowledge?

A. I heard that a boycott had been voted by Local No. 3; yes.

Q. A boycott not only of Mackay Radio but of its associated companies, the Postal Telegraph and the Commercial Cable Company, and Commercial Pacific Cable Company?

A. I heard that.

Trial Examiner EICKHOFF. How would such a boycott be carried out? What would be the nature of it?

The WITNESS. Well, I believe the boycott was passed through Local No. 3 not to patronize these companies.

Trial Examiner EICKHOFF. That is, the individual members would not?

The WITNESS. Patronize these companies.

By Mr. MERRICK:

Q. And that was urged both on point to point men and on the marine men; is that true?

A. I wasn't at the meeting, and I don't know how binding it is.

Q. I am not talking about binding—who was urged to exert that boycott, the members of both the point to point organization and the marine organization?

A. I don't know who that would be binding on. I believe that it would be binding on the men who voted, the marine men.

Q. Didn't the point to point men vote on it, too?

A. I don't know of any time that this has been voted on

312 by the point to point men.

Q. Do you read the regular publications of your organization?

A. I haven't seen one in quite awhile.

Q. You haven't seen any of the official literature of your organization on the subject of boycott?

A. Not that I recall.

Q. Have you yourself taken part or aided in any way in this boycott?

A. No, sir. I haven't sent any telegram, though.

Q. Have you called on anyone urging them not to employ the facilities of these companies?

A. No, sir.

Q. Have you been requested by your organization to do so?

A. No, sir.

Q. Is there a boycott committee that has been organized; do you know?

A. Not that I know of.

Q. If you were requested to take part in this boycott, would you do so?

Trial Examiner EICKHOFF. You need not answer that question, Mr. Rone, if you don't want to.

Mr. MERRICK. The Examiner excludes it?

Trial Examiner EICKHOFF. I said if he didn't want to.

313 The WITNESS. I don't want to.

By Mr. MERRICK:

Q. Are you willing to go back to your position regardless of actions taken as to the other complainants in this case?

A. No, sir.

Q. That is, you will not under any circumstances return unless the other four men are also returned?

A. I would not say under any circumstances.

Q. Under what circumstances would you return when the others do not?

A. I will return——

Mr. EDISES. (Interrupting.) I object to the question because I fail to see that it has anything particularly to do with his reinstatement. In other words, if he is ordered to be reinstated, you can ask will he accept it, but you cannot ask about hypothetical circumstances that cannot possibly issue as a result of a hearing of this kind.

Trial Examiner EICKHOFF. I think it would be to the witness' advantage to answer that question. I will allow it.

A. I would return to work any time that discriminations against myself were removed.

By Mr. MERRICK:

Q. You would return yourself, regardless of the action as to the others?

A. Yes; I will say that.

Q. Then you reverse your testimony that you have just

314 given?

A. I will have to; yes.

Q. To be consistent, you will have to reverse it?
A. I was thinking of the money I had in my pocket.
Mr. EDISES. I object to that.

By Mr. MERRICK:

Q. Have you received any money from your union during the period since October 4?
A. I have not.
Q. You have not?
A. No.
Q. During the period that you were in the employ of the Mackay Radio you considered yourself a good, loyal, and efficient employe; is that correct?
A. I did.
Q. When did you say you first started working for the Mackay Radio?
A. In 1927; February, I believe.
Q. What was the name of the company then?
A. Federal Telegraph Company.
Q. How long did you work then?
A. I worked in Portland, in the Portland office, for a period of three or four months, and after that time I was under their jurisdiction on ship stations.
Q. When did you leave the Portland office; do you remember?
A. Sometime in the summer of 1927.
Q. Were you still with Mackay Radio after June 1927?
315 A. I was under their jurisdiction; that is, I was placed in a position by the Mackay Radio manager in Seattle, Washington.
Q. How long did that last?
A. About five months.
Q. That is, from, you say, June up until October or November 1927?
A. Sometime in there.
Q. What did you do then?
A. I was assigned to a ship by the Mackay Radio manager.
Q. How long was that assignment?
A. On various ships up until 1928, sometime in the fall of 1928.
Q. Then what were you doing?
A. Then I left the jurisdiction of Mackay Radio and went to work for the States Steamship Company.
Q. How long were you in their employ?
A. Approximately a year.
Q. That was from what time, in 1928——
A. (Interrupting.) I would say from around October 1928 to August 1929.
Q. What did you do after August?
A. I was unemployed.

Q. Where were you?

A. Portland, Oregon.

316 Q. Just unemployed?

A. Unemployed.

Q. Were you looking for a job during that period?

Mr. EDISES. I object to that question and the entire line of questioning. What difference does it make whether he was looking for a job or not. He said he was unemployed.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

Q. How long did you remain unemployed?

A. From August 1929 until I was employed by the Mackay Radio Company here in San Francisco, on January 13, 1930.

Q. What was your address in Portland during that period?

Mr. EDISES. I object to that question as incompetent, irrelevant, and immaterial.

Trial Examiner EICKHOFF. Objection sustained.

Mr. LIVINGSTON. The Supreme Court has ruled that that is one question we are entitled to ask on cross examination.

The Supreme Court of the United States reversed a judgment right in this court because such an objection was sustained. We are entitled to go into a man's history on cross examination, and that is the ruling of the Supreme Court.

317 Trial Examiner EICKHOFF. You show me the decision and perhaps I will change my ruling; I won't now.

Mr. LIVINGSTON. I can submit the decision. I have forgotten the name of the case. It was taken up by Leo Friedman and the case was reversed.

Trial Examiner EICKHOFF. If you want to urge that question, show me the decision and perhaps I will change my ruling. At the present time I can not see any particular materiality as to what his address in Portland was.

By Mr. MERRICK:

Q. You say you were unemployed during this period. Were you looking for a job?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. The objection to that question is sustained.

By Mr. MERRICK:

Q. Mr. Rone, have you ever been convicted of an offense against the laws of the United States?

Mr. EDISES. I object to that question. The question of whether or not he has been convicted of an offense, in the terms that Mr. Merrick has described it, is incompetent.

Trial Examiner EICKHOFF. I am inclined to think it is.

Mr. MERRICK. Under what ruling?

Mr. EDISES. You haven't asked whether he was convicted of a felony, a misdemeanor, or anything else, but "any offense."

Mr. MERRICK. You can not be convicted unless it is a crime. That is the meaning of the term.

318 We are making our rules, as I understand it, as we go along.

Mr. EDISES. I object to that question. I fail to see it has anything to do with the case.

Trial Examiner EICKHOFF. The objection is sustained, but I would be glad to hear argument on it.

By Mr. MERRICK:

Q. Have you ever been convicted of a crime or a felony?

Mr. EDISES. That is objected to on the ground that it is compound. Ask one question at a time.

Mr. MERRICK. The definition of "compound" is when it is in the conjunctive, which this is not.

Q. Have you ever served any time in jail?

Mr. EDISES. I object to the question. Whether he served any time in jail or not is, in the first place, immaterial; and in the second place, you can not impeach him by asking him a question of that kind, if that is what you are trying to do. He might have served a term in jail, but that has nothing to do with his veracity or credibility, if that is what you are trying to get at.

Trial Examiner EICKHOFF. The objection is sustained to that question.

By Mr. MERRICK:

Q. Have you ever been convicted of a felony?

Mr. EDISES. I make the same objection, Mr. Examiner,

319 unless Mr. Merrick establishes his purpose in asking these questions. What are you trying to do, impeach his veracity?

Mr. MERRICK. How many times did you explain to me on direct what the purpose of your questions were? Answer me that and then I will answer you.

Mr. EDISES. Are you trying to impeach his credibility?

Mr. MERRICK. I decline to answer.

Trial Examiner EICKHOFF. I am very loth to admit any such testimony unless I am convinced that it is allowable, so I would like to have some argument on that point.

Mr. MERRICK. I offer in evidence a certified transcript entitled "In the District Court of the United States for the District of Oregon, United States of America vs. Lon Rone, John Satterwhite, Howard Wise, and Eugene Salvo, Defendants, No. 12810. Indictment for violation of the Tariff Act of 1922," and the rest of the paper.

Trial Examiner EICKHOFF. Do you object to the admission of that, Mr. Edises?

Mr. EDISES. This doesn't show the conviction.

Mr. LIVINGSTON. No; it just shows he pleaded guilty.

Mr. MERRICK. Yes; and that he was sentenced to a $500 fine and six months on the rock pile.

Mr. EDISES. I object to that and ask that it go out.

Trial Examiner EICKHOFF. It may be marked for identi-
320 fication, and I want this point argued. You do not have to argue it now, but you can argue it later.

Mr. EDISES. Mr. Merrick has not established, even assuming that Mr. Rone was convicted for this offense, that it is the type of offense which he is entitled to bring in for the purpose of impeaching the credibility of Mr. Rone.

Trial Examiner EICKHOFF. Let us take this up in an orderly way. Will you present some argument in favor of your offer now, or later?

Mr. MERRICK. It is rather difficult to argue as to the admissibility of evidence when I do not know what the rules are that guide it. In the jurisdictions which I have practiced before, and I have taken part in cases in a good many jurisdictions in the United States, a conviction under the laws of the United States, or involving an offense punishable by anything like a $500 fine and six months at the rock pile, has always been regarded as admissible on the question of the credibility of the witness.

Trial Examiner EICKHOFF. We will mark that for identification and take it up after 2 o'clock.

Mr. EDISES. I want to state that this document——

Trial Examiner EICKHOFF. (Interrupting.) Mr. Edises, I think it will be better to mark it now for identification and take it up at 2 o'clock.

321 (The document referred to was marked "Respondent's Exhibit No. 1 for Identification, Witness Rone.")

Mr. MERRICK. That is all.

Trial Examiner EICKHOFF. Any redirect?

Mr. EDISES. Just a few questions.

Redirect examination by Mr. EDISES:

Q. During the entire period that you worked for Mackay, Mr. Rone, with the exception of the one instance that you have repeated in regard to an error which you say was due to a misunderstanding, was your work ever complained against by any Mackay Company official? Did they ever complain of the merit or quality of your work?

A. During the time that Mr. Layman was chief operator there was plenty of complaints; since Mr. Jorgensen has been appointed I have had no complaints.

Q. What were the nature of the complaints during Mr. Layman's tenure?

A. Well, it would be hard to state just all the complaints. Mr. Layman was more or less prone to jump at conclusions and not hear a case out.

Q. Did he confine his complaints to you exclusively?

A. No; many of the men—in fact, all of them.

Q. What was the feeling of the men in this regard, did they feel that those complaints were justifiable?

Mr. MERRICK. Objected to as irrelevant.

322 Trial Examiner EICKHOFF. Objection sustained.

By Mr. EDISES:

Q. What is the meaning of a Class A operator?

A. In the Mackay Radio operating room, H. B. San Francisco Class A is the highest rating in ability and with seniority.

Q. In other words, Class A refers to your efficiency and ability?

A. Yes, sir.

Q. What was your class?

A. Class A.

Q. Were you a Class A operator during the entire period that those classifications were in existence?

A. Yes, sir.

Q. Did those men get the highest pay?

A. Yes, sir.

Q. You testified that a man by the name of Mohler was appointed a supervisor over the heads of certain other operators who had been longer in the employ of the company. Were those men Class A operators?

A. At the time of his appointment as supervisor I don't believe there was any classification other than manual and tape. However, the men who he was appointed over were much better operators and much longer in seniority.

Q. You testified that, in connection, I believe, with Mohler,

323 that you filed a complaint in regard to his promotion; is that correct?

A. That was taken up through a meeting. I did not myself file any complaint. A discussion during the meeting, brought on by Mr. McLaughlin, that he had been discriminated against inasmuch as he had not been appointed supervisor, and Mr. Mohler had been appointed supervisor, I believe was the reason this was placed before Mr. Tuel.

Q. And was the matter rectified?

A. Mr. Mohler was retained as a supervisor, but Mr. McKercher and Mr. McLaughlin were appointed over him.

Q. And that was done after you had complained about it; is that correct?

A. Yes, sir.

Trial Examiner EICKHOFF. Are we developing anything new now, Mr. Edises? I don't want to review previous testimony again.

By Mr. EDISES:

Q. In regard to manual operators, does that sort of operation require less skill than tape operating?

A. It requires less physical and mental strain than tape operation.

Q. Does it require less training than tape operation?

A. I wouldn't be able to say that.

Q. You stated that in 1934 a raise of $1.50 was granted to certain of the men; is that correct?

A. To certain of the men in the lower brackets, they were
324 granted a raise of $1.50.

Q. Was that $1.50 a day, a week, or what?

A. A month.

Trial Examiner EICKHOFF. We will take a ten minute recess at this time.

(At this point a recess was taken after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. If you gentlemen are ready, we will proceed.

By Mr. EDISES:

Q. You testified that you were a strike captain during the strike, and that you were around the picket lines a good deal during that period. Did anyone ever suggest to you that forceful means be employed against the company in connection with the strike?

A. Yes.

Mr. LIVINGSTON. Will you please read that question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Will you explain that answer?

A. Mr. Robert Hatch, the office electrician, drove up in the picket line and I was sitting in his car discussing the strike, and he was very low about the possibilities, and said that he had been listening to the transmitters at Palo Alto, and he didn't think we had a chance
325 of winning unless we could get them off the air.

He went further and offered to drive me down and show me the power lines going to the transmitter, and show me how to sabotage them and lend me his car to do it later that day or that night.

Q. What did you say to his suggestion?

A. Pardon?

Q. What was your response to his suggestion?

Mr. LIVINGSTON. As the Examiner has indicated before, he is not interested in immaterial matter. I do not see what is material about this. We do not like to interrupt with objections when we are told not to.

Trial Examiner EICKHOFF. Inasmuch as you didn't object to the former question, I will allow this one, and let's close it there.

Mr. LIVINGSTON. Will the Examiner do one or two things, if the Examiner please? Will the Examiner either do as he did when we were conducting our cross examination, and let us interpose the objections which are obvious, or let us do so without telling us we are objecting too much? We are entitled to the same dealing, I think, as the Government. When I objected, why, I was told, "Do not object

so much; you are delaying the thing." Then when I don't object I am told, "You didn't object."

326 Trial Examiner EICKHOFF. If I have been that general in my statement, I apologize.

Mr. LIVINGSTON. I do not ask the Examiner for an apology, but I would like an even break.

Mr. EDISES. May I point out——

Trial Examiner EICKHOFF. I do not like your implication that you are not getting an even break.

Mr. LIVINGSTON. I mean in the matter of objections. When the Examiner says, "I would rather you wouldn't object so much because you are delaying the trial," I am inclined to say, "All right, I will keep still." But I do not want to be penalized for taking those instructions.

Trial Examiner EICKHOFF. All I can do is to assure you I will do the best I can to rule properly on the merits of each question as it arises.

Mr. LIVINGSTON. I didn't intend to suggest the lack of an even break on the merits, but the way the objections have come up.

Now, if the Examiner will permit, I move to strike out all testimony about somebody else proposing sabotage, unless it is connected up with the company.

Mr. EDISES. I would like to point out that Mr. Merrick, on his cross examination, asked a question as to the use of force in connection with the strike.

Mr. LIVINGSTON. This gentleman said he had nothing to do with it and knew nothing about it.

327 Mr. EDISES. I am developing the matter opened up by yourself.

Mr. MERRICK. As a matter of fact what you are really doing is impeaching your own witness. On cross examination he said he had no conversation with anybody about using force.

Mr. EDISES. No; he said he did not use any force.

Mr. MERRICK. I asked if anybody discussed it with him and he said "No." I asked if he knew about it and he said, "No." You are showing he didn't tell the truth in regard to my questions.

Mr. EDISES. Let us have the testimony on it and find out.

Mr. LIVINGSTON. We will withdraw the objection rather than wait to find the testimony.

Mr. MERRICK. We would rather have it in anyway.

Trial Examiner EICKHOFF. Where do we stand now? Is there a pending question?

Mr. EDISES. Mr. Merrick just stated he would rather have it in anyway, in contradistinction to the position Mr. Livingston took.

Mr. LIVINGSTON. The objection is withdrawn. There isn't a pending question even.

Mr. EDISES. I think there is.

Will you read the last question, Mr. Reporter?

328 Mr. MERRICK. He was explaining his answer.

Trial Examiner EICKHOFF. Do you know where you were, Mr. Witness?

The WITNESS. I believe the last question was something like, "What did you answer?"

Mr. LIVINGSTON. What did he say to Mr. Hatch; that is correct.

By Mr. EDISES:

Q. What was your response to Mr. Hatch's suggestion?

A. I was considerably surprised and I told him I couldn't see how anything could be done with 25,000 volts, or something like that, and he said he would be glad to show me. I said I would consider it.

Q. You said what?

A. I would consider it.

Q. Then what happened?

A. I told several of the men about it and told them to lay off; that it looked pretty hot to me.

Q. What did you mean by that?

A. I have never been of the opinion that sabotage can do anything for any labor organization, and I don't want any part of it.

Q. Did Mr. Hatch offer to do this himself, or simply suggest that you do it?

A. He offered to show me the line and show me how to do it,
329 and lend me his car to do it.

Q. Didn't offer to do it himself?

A. No, sir.

Mr. EDISES. Do you want to offer this document [indicating] in evidence, Mr. Merrick?

Mr. MERRICK. It has been offered.

Mr. EDISES. It was marked Respondent's Exhibit No. 1 for identification.

Trial Examiner EICKHOFF. It was marked for identification.

Mr. MERRICK. I offer it in evidence.

Mr. EDISES. I have no objection to its going in evidence.

Trial Examiner EICKHOFF. All right; it may be admitted as Respondent's Exhibit No. 1 in evidence.

(The document referred to and previously marked "Respondent's Exhibit No. 1 for Identification" was received in evidence as "Respondent's Exhibit No. 1, Witness Rone.")

By Mr. EDISES:

Q. You were convicted of a violation of the Traffic Act of 1922?

A. I plead guilty.

Q. And did you serve a term as a result of that?

A. I did.

Q. How long?

A. Six months.

330 Q. Where?

A. Multnomah county jail, Portland, Oregon, Kelley Buttes.

Q. When you applied for work with Mackay Radio, do you know whether the company knew about this?

A. Yes; I wrote Mr. Sanderson, manager of Seattle, Washington, while I was still confined.

Q. While you were still in jail?

A. Yes, sir. I told him——

Mr. LIVINGSTON. (Interrupting.) Pardon the interruption; but if it is a letter, we want the contents.

The WITNESS. I told him——

Mr. LIVINGSTON. (Interrupting.) Wait a minute.

Mr. EDISES. Are you objecting?

Mr. LIVINGSTON. I am objecting to the contents of the letter.

Trial Examiner EICKHOFF. On what ground?

Mr. LIVINGSTON. The letter is the best evidence.

Mr. EDISES. I think that it is proper at this time to object to both of the attorneys making objections and otherwise interfering with the handling of the case by just one of them. In other words, we are going to have these frequent objections and interruptions by both attorneys; and if that continues, it will interfere with the conduct of this trial. Argument and objections will be interminable, and I do not think it is quite fair to the complainants in this matter.

331 I suggest that either Mr. Merrick make the objections and conduct the trial or let Mr. Livingston do it.

Mr. LIVINGSTON. There is no law or trial procedure or custom or rule of court which prohibits more than one attorney making legal argument or legal objections. The witness is protected in some instances from two attorneys because it is troublesome for the witness, but all courts permit as many attorneys as there are in the case to offer objections and assist the court in argument. That is the purpose of argument, to assist the court in making a correct conclusion.

Trial Examiner EICKHOFF. May I request this—that whichever counsel is speaking be not interrupted unless it is necessary to forestall an answer of the witness before an objection has been interposed, and that counsel on both sides will recognize that the other may have the right to conclude his remarks before an answer is made. In other words, be a little more patient and not jump the gun quite so much.

Mr. EDISES. Did you sustain Mr. Livingston's objection to his testifying as to what he said in this letter, Mr. Examiner?

Trial Examiner EICKHOFF. Is the letter available?

Mr. EDISES. I don't know whether it is or not. We haven't got the letter.

Mr. MERRICK. Have you ever made any request on the
332 company to produce the original of the letter?

Mr. EDISES. We haven't. As a matter of fact, I don't know whether the company still has the letter, do you?

Mr. MERRICK. This is the first time I ever heard of it, so how can I know?

Mr. EDISES. You apparently had quite a little information in regard to Mr. Rone's activity, and I presumed that you might also have known about the letter.

By Mr. EDISES:

Q. You did write to Mr. Sanderson, didn't you?

A. Yes; I wrote to him and told him I was in jail.

Mr. LIVINGSTON. I ask that the witness be admonished not to state the contents of the letter unless the Examiner has ruled.

Mr. EDISES. May I put another question to the witness that I think possibly will suffice for our purposes, and I am sure it will not be objectionable to Mr. Livingston or Mr. Merrick?

Trial Examiner EICKHOFF. All right. Don't answer the question until counsel has had an opportunity to object.

By Mr. EDISES:

Q. Where was this letter mailed from?

A. Kelley Buttes, Portland, Oregon.

Q. What is that?

A. That is a rock pile.

Q. Did you ever conceal from the company that fact that
333 you had been convicted of this offense?

A. No.

Mr. MERRICK. I don't think that is proper.

By Mr. EDISES:

Q. Did you ever attempt to?

A. No.

Mr. MERRICK. It isn't a question of whether he attempted to do, or did do.

Trial Examiner EICKHOFF. If you have an objection, make it and let me rule on it.

Mr. MERRICK. I object.

Trial Examiner EICKHOFF. Objection overruled.

By Mr. EDISES:

Q. Answer the question.

A. No. Mr. Spencer, who was then chief operator at Portland, knew about it at the time that the trial was on; also when I was discharged he used every effort that he could to place me in San Francisco.

Q. Where is Mr. Spencer?

A. He is now at Portland, Oregon.

Q. What is he now?

A. He is chief operator for Mackay in Portland, Oregon.

Mr. EDISES. That is all.

Mr. MERRICK. Nothing further.

Trial Examiner EICKHOFF. This witness may be excused subject to further call.

(Witness excused.)

334 Mr. LIVINGSTON. Are those minutes ready for us now?

Mr. EDISES. Yes; I think we have the ones you wanted.

Trial Examiner EICKHOFF. Do you wish to go over them now?

Mr. LIVINGSTON. No. I think Mr. Rone should be available until such time as we have had an opportunity to examine the minutes.

Mr. MERRICK. It probably won't be today.

Mr. EDISES. Then we will ask Mr. Rone to return in the morning.

Mr. RONE. Yes.

Trial Examiner EICKHOFF. Are you ready to call your next witness

Mr. EDISES. Call Mr. Loudermilk.

Trial Examiner EICKHOFF. You are still under oath, Mr. Loudermilk.

ALONZO B. LOUDERMILK, called as a witness for the National Labor Relations Board, having been previously duly sworn, further testified as follows:

Direct examination by Mr. EDISES:

Q. What is your address, Mr. Loudermilk?

A. 722 Taylor street, San Francisco.

Q. Are you married?

A. No.

Q. No children, I presume?

335 A. Yes; I have a child. I am not married, but I have a child.

Mr. EDISES. I suppose that can go out of the record.

Mr. LIVINGSTON. We will stipulate that he was married.

By Mr. EDISES:

Q. How long have you been employed by Mackay Radio?

A. Two years.

Q. And what class operator are you?

A. Class A.

Q. Who did you work for before you went to work for Mackay?

A. In the radio field?

Q. Yes.

A. The Radio Corporation of America.

Q. How long did you work for them?

A. Seven years.

Q. During the period that you worked for them did you receive pay received by the highest grade class of operators?

A. That is difficult to answer in those terms.

Q. Well——

A. (Interrupting.) I went to work for RCA in 1923 and I received regular advancements in salary up to the time I received the highest rating that they were paying in their office.

Q. So when you left them you were receiving the highest rate of pay?

336 A. I was for an operator.

Q. An operator?

A. Yes.

Q. What was the salary you received when you went to work for Mackay?

A. $159.50.

Q. Did you receive any increase?
A. I received an increase to $169.50.
Q. Any further increases?
A. I received an increase in July of 1934, to $180 per month.
Q. And any further increases?
A. No further increases.
Q. Will you describe your work as an operator, the kind of work you did at Mackay?
A. The handling of messages, both receiving and transmitting, by use of perforators, for transmission and reception of tape, automatically receiving—rather being what we term automatic.
Q. And you were a Class A operator?
A. Yes.
Q. Are you a member of the ARTA?
A. I am.
Q. When did you join ARTA?
A. In February of 1934.
Q. What positions, if any, did you hold in ARTA?
337 A. Well, I held several positions during the time of my membership.
My first position, you might call it, was the chairman of the San Francisco point to point local. That was early in 1934. Subsequently [Witness referring to notes].
Q. (Interrupting.) Just a minute, Mr. Loudermilk. Do you need those notes?
Mr. MERRICK. No objection to using them.
The WITNESS. I have a couple of dates here I refresh my memory with.
Trial Examiner EICKHOFF. Let him use them, then we will get the dates straight.
Mr. EDISES. Do you want to see them?
Mr. LIVINGSTON. When he is through with them. There is no sense bothering him now. You can put them in the safe deposit box with your other notes, and we will look at them later. Mr. Wagonet will not let me go up there anyway.

By Mr. EDISES:

Q. Proceed, Mr. Loudermilk.
A. I believe I stated that I was originally chairman of the San Francisco point to point local, and later I was nominated for the position of executive committeeman for the point to point group of the west coast. However, I was never elected to that position.
Q. Did you serve on any other committees?
A. I served on the original Grievance Committee, later
338 termed the Relations Committee.
Q. Who were the other members of that committee?
A. Mr. Palmer and Mr. Martinelli.
Q. Any other members elected to that later?
A. Later—What do you mean?

Q. You are speaking now of the so-called Relations Committee?
A. Yes; that was the original committee.
Q. Original committee. And you have described to the best of your recollection all of the members of that committee?
A. Of that original committee known as the Grievance Committee; yes.
Q. Was Mr. Palmer a member of that?
A. He was.
Q. Was Mr. Bash a member?
A. I don't believe Mr. Bash was, although I don't remember distinctly or not.
Q. Was Mr. Rone a member?
A. No; he was not a member of that committee.
Q. Was he a member——
Mr. MERRICK. (Interrupting.) Mr. Examiner, I don't want to object to this, but all this has been gone over with Mr. Rone and he is asking this witness whether Mr. Rone was a member of a committee, and Mr. Rone has already testified. I cannot see that it is helpful.
339 Trial Examiner EICKHOFF. It might be corroborative. I will allow it.
Mr. MERRICK. On cross examination we haven't challenged Mr. Rone was a member. He has testified to all the membership of these various committees. We will take it for granted that is right, or stipulate if you want to.
Mr. EDISES. Are you willing to stipulate Mr. Rone's testimony as to the membership of these various committees is correct?
Mr. MERRICK. We can not do that without examining the minutes. But we can state that this witness, if questioned, would give the same evidence as to what the membership of the committees were.
Mr. EDISES. It is so stipulated.
Mr. LIVINGSTON. If it is agreeable to the witness, of course.

By Mr. EDISES:

Q. Would your testimony, Mr. Loudermilk, in regard to the membership of the committees be similar or the same as Mr. Rone's?
A. Yes.
Q. All right——
A. (Interrupting.) Except where either he or I made an inadvertent mistake. It might be possible that we might mention one or more of the members serving on a committee, that someone else may have been in.
340 Trial Examiner EICKHOFF. Is that so stipulated?
Mr. MERRICK. So stipulated.
Mr. EDISES. Yes.
Trial Examiner EICKHOFF. And in mentioning these committees we refer to the committees of the ARTA local No. 3 point to point group?
The WITNESS. That is correct.

By Mr. EDISES:

Q. Were you a charter member of ARTA Local No. 3?

A. Yes.

Q. Did you participate in the organization of that local?

A. I did.

Q. Can you describe briefly the work you did in connection with the organization of that local?

A. Yes. Our original meetings were held in the early part of 1934 and with a nucleus that we had at our original meetings we formed a committee for membership composed of approximately 15 or 20 men, and every one of us attempted and successfully attempted to enlist all the rest of the men in the office in the union, and my particular activities were contacting as many men as I could and receiving their applications and their initiation and dues. I took over that work actively myself.

Q. Did you participate—Strike that—put it this way: What were the first negotiations with the company in which
341 you participated as a member of the ARTA committee?

A. That was as a member of the committee which conferred with Mr. Tuel in June of 1934 regarding increases of salary and betterment of working conditions, and seniority rights, etc.

Q. And what was your next activity as a member of a committee or group which negotiated with the company, if any?

A. I can't say positively. Outside of that meeting that we held in June of 1934, and possibly a few minor meetings subsequent to that time, I had no other—that is, I attended no other major discussions with the officials.

Q. Do you know whether the company knew you were chairman of the point to point local?

A. Yes.

Q. How did they know that?

A. Well, everyone referred to me as being the chairman of the local.

Q. Mr. Rone testified, or stated something about a trip that you took to the east. How did you happen to take that trip?

A. Well, we had successfully organized the majority of the men in the H. B. operating room here, as well as the men at Palo Alto and Lobitos, and we were making very rapid strides in other districts, such as Portland, Seattle, and Los Angeles, and we had been at-
342 tempting to secure the cooperation and assistance of the men in the New York office of the Mackay Radio, known as the M. K. office, and we hadn't been able to secure what we considered a proper tie-up, that is, cooperation from that end.

So we, at this end, deemed it necessary that someone go back who understood the facts thoroughly, from this end, and explain it to them in New York and to find out if we couldn't get them to join the ARTA with us.

So I was designated for that trip and I made the trip in October of 1934.

Q. Were you elected by the union, or the membership, I should say?

A. Yes.

Q. Did you get leave from the company to make that trip?

A. I did.

Q. How much leave did they grant you?

A. Three weeks.

Q. What was said and done when you applied for leave to make that trip, if you remember?

A. Well, in applying for the leave I didn't quite understand the proper procedure in applying, and I asked Mr. Jorgensen, who was the chief operator——

Mr. MERRICK. (Interrupting.) I object again. I don't see the relevancy of this testimony as to what the conditions were in con-
343 nection with his leave. That is not an issue in any way in this case.

Trial Examiner EICKHOFF. I don't know what may come out.

Mr. EDISES. I want to bring out his activity, his very great activity in the union and the fact that on numerous occasions this activity of his was brought to the attention of the company.

Mr. MERRICK. You mean something in his application that showed—You are bringing out something in his application that showed the nature of the work he intended to do while on the trip?

Mr. EDISES. Yes.

Mr. MERRICK. No objection.

By Mr. EDISES:

Q. Will you go ahead?

A. I made application through Mr. Jorgensen, the chief operator, and Mr. Jorgensen came to me and asked me if I was trying to look for employment or work with any other firm, or was I going to do any outside work. I told him "No."

I understood him to say, "You are not going to work for RCA?"

I said, "Certainly not." Later on in the day I was informed that my application for——

Mr. LIVINGSTON. (Interrupting.) Informed by whom, if you please?

The WITNESS. By Mr. Jorgensen, that my application had been approved and that if I would see Mr. Rodman I could
344 secure it.

So I went to see Mr. Rodman. But in the meantime, before I saw Mr. Rodman, I happened to think that possibly Mr. Jorgensen had asked me, "Are you going to engage in any ARTA activity" rather than RCA, and I went back to him and asked him whether that was what he meant, ARTA, and he said "Yes."

So I said, "Well, I can not ask you for a leave without it definitely being understood that I am going east to engage in ARTA activity, not RCA, or anything else other than union activity."

By Mr. EDISES:

Q. What did he say to that?

A. I explained——

Mr. LIVINGSTON. (Interrupting.) The question is, what did he say?

A. Mr. Jorgensen had nothing to say about it, as I recall. He wasn't granting my leave.

Mr. LIVINGSTON. I didn't hear the answer.

(The answer was read aloud by the reporter as above recorded.)

Mr. EDISES. Mr. Livingston, if you will direct your questions, if you have any, or your suggestions, to me, please.

Mr. LIVINGSTON. I suppose you are the person to whom I did.

345 Mr. EDISES. It wasn't clear.

Trial Examiner EICKHOFF. It would be better, if you want something explained, to wait until the answer is completed and then go into that.

Mr. LIVINGSTON. Mr. Examiner, the question was: What did Mr. Jorgensen say? The witness, I do not think, got it, so I said to Mr. Edises, "What did Jorgensen say," or something like that, in order to keep the even tenor of the examination. I don't think that was very bad.

By Mr. EDISES:

Q. Will you proceed with your answer, Mr. Loudermilk?

A. Well, I explained to Mr. Rodman when I saw him, that the nature of the business that I wished to go on to New York was to see the men there and attempt to sign them in the ARTA. He didn't agree that that—he said that he couldn't grant me a leave of absence for that purpose; that it would be doing work outside the company. After some discussion, at which I pointed out to Mr. Rodman that it was to the benefit of the company as well as the men, to have them unified in a single organization in which they could deal with them collectively at one time, rather than several groups of men, he finally consented to sign my leave of absence. I believe the technical term used was "Welfare work," or something like that, to cover it.

Q. Do I understand you to say that your original applica-

346 tion for a leave to do ARTA work was changed to a leave to do welfare work?

A. I don't know the exact term that was used there. I know that we changed it from ARTA work. It was not granted under that, although Mr. Rodman understood distinctly what I was going for.

Q. Nevertheless he didn't want the term "ARTA" to be a part of your leave, is that correct?

A. That is correct.

Q. Now, did you go east?

A. Yes. However, there is something I want to put in there about that leave.

Q. All right, go ahead if you have something to add.

A. The leave was finally granted with the understanding that when I came back I could have the job if something hadn't occurred in the meantime to prevent my having a job.

Q. You mean to say he wouldn't guarantee that you could get your job when you came back?

A. No; he wouldn't guarantee it, and I didn't ask him to. I said I would be glad to take his word that my job would be there when I returned.

Q. Did he say the job would be there?

A. Providing something hadn't happened in the meantime to prevent me having my job, such as conditions of business, or any
347 number of things probably he had in his mind which I don't know. I accepted it on that term, however.

Q. Then it really was——

Trial Examiner EICKHOFF. (Interrupting.) In other words, your status with the company was not to be prejudiced by your leave?

The WITNESS. Well, I didn't feel that it would be; otherwise I wouldn't have left.

Trial Examiner EICKHOFF. I mean that was what Mr. Rodman gave you to understand, that you would not lose your job solely because of going east on ARTA business, but only in the event some other circumstance arose, is that it?

The WITNESS. That is correct, yes. He was perfectly frank, I will admit.

By Mr. EDISES:

Q. About when did you leave for the east, Mr. Loudermilk?

A. The exact day I could not recall, but it was either the last few days of September 1934 or the first few days in October.

Q. Did the union supply you with funds for your expenses?

A. They did.

Q. Where did you go first?

A. I went first to Chicago.

Q. What did you do there?

A. Several men—not several, two men—met me at the station in Chicago.

348 Q. ARTA men?

A. They were not at that time members of ARTA. They were ready to join the ARTA and had already secured the applications of several other men in the Chicago office of Mackay Radio, which they showed to me and told me about their effort to organize at that point.

I only spent about two or three hours in Chicago that day and went right through there and caught the train for New York.

Q. And what did you do in New York?

Mr. MERRICK. I simply make this objection on the ground that this is unduly prolonging this hearing. He said that the purpose in mentioning this line of testimony was to show that the company

had knowledge of the activities in which he was to engage at the time leave was granted so the company knew he was an active member of the union. It seems to me that is in. I don't understand what can be the relevancy to the issues in this case as to exactly what he did in New York. If he asked him whether he was active in working for the organization in New York it seems that would be quite sufficient.

Trial Examiner EICKHOFF. Had you some further purpose in mind?

Mr. EDISES. Certainly; all this is a part of his activity
349 which surely came to the attention of the company, and surely Mr. Merrick understands our object in bringing out the union activities of these men. There is no mystery about that.

Mr. MERRICK. No; there is no mystery to us. It is already in that he was an active member of ARTA.

Mr. EDISES. We want the specific facts in the record.

Mr. MERRICK. Can you show what bearing that has on the issues here?

Could we have this off the record so as not to encumber the record?

Mr. EDISES. I think this has a bearing on the issues. This can be off the record.

Trial Examiner EICKHOFF. No, on the record.

Mr. EDISES. Very well. We are interested in developing in as great detail as we can the specific facts of the union activities of Mr. Loudermilk and these other men, particularly with reference to where they came into direct contact and conflict with the company. The necessary bearing of those facts on the issues of why they were discharged ought to be perfectly clear, it seems to me.

Trial Examiner EICKHOFF. I will allow the examination along those lines, but rather than saying to the witness, "Then what happened?" and "Then what happened?", see if you can not get right down to the pertinent facts upon which you rely.

350 Mr. MERRICK. That is the only interest I have. I waited until he finished about Chicago, and that didn't seem to have any bearing.

By Mr. EDISES:

Q. Very well. When you got to New York, Mr. Loudermilk, what activities did you commence to engage in, in connection with the organization of ARTA in New York?

A. I immediately contacted as many of the members of the Mackay office at New York as I could, both direct individually and through meetings that were held, and attempted to organize them in a chapter or a local of the ARTA; naturally, with the assistance of our national officers at that point.

Q. Did you succeed?

A. I succeeded in securing the applications of over 35 members of that group, of that office, and before I left New York I received the

registrations and the initiation fee of around 14; I believe the exact figure was 14 members.

Q. Did you engage in any further activities?

A. I had several conferences with Mr. Tuel while I was in New York, and at which time we discussed the desirability of unifying the entire Mackay system under the ARTA, or any other national organization, which would allow them to deal with their whole organization collectively without going to every individual station in the United States to do so, that they controlled.

Trial Examiner EICKHOFF. What was Mr. Tuel's capacity?

The WITNESS. Mr. Tuel was the vice-president of Mackay
351 Radio, and, I believe, the general manager, as you term it.

By Mr. EDISES:

Q. Did you make any demands or requests on Tuel in regard to working conditions?

A. No.

Trial Examiner EICKHOFF. Not at that time.

The WITNESS. Not at that time while I was in New York.

By Mr. EDISES:

Q. Not while you were in New York?

A. No. There was one matter that came up while I was in New York that we did ask about.

They had one or two girls who were attempting to learn our line of work and had been practicing in the New York office on spare equipment that they had there, which was actually there, I believe, for the purpose of practicing for messenger boys, and so forth, who wished to try to learn our business. They had had girls in there practicing, and the men objected to the use of these girls because they believed they were trying to work these girls into the circuit. We had some discussion with Mr. Tuel regarding that, and also with his chief operator there at that point, Mr. Scribner.

Q. And as a result of your conference, what happened?

A. As a result they promised the girls would no longer be allowed to practice in the office.

Q. Did you do anything else in New York that you haven't indicated in connection with ARTA activities?

Mr. MERRICK. Isn't that too broad?

352 Trial Examiner EICKHOFF. I think it is rather broad. Make it with reference to Mackay Radio.

A. With reference to Mackay Radio, after I had passed through Chicago, the men who came to meet me at the station with the applications of other men who wished to join ARTA, went to the chief operator at the Chicago station and told him of their intention.

Then I received two or three lengthy telegrams and letters and also a long distance telephone call, during my time in New York telling me these men were being——

Mr. LIVINGSTON. (Interrupting.) May we ask from whom, Mr. Edises?

Mr. EDISES. I think he was about to get to it.

Mr. LIVINGSTON. He said he got some telegrams "telling me." The first thing is, we want to know who they came from so we will know whether to object to what was said.

By Mr. EDISES:

Q. Who did the telegrams come from?

A. Came from Mr. Richards.

Q. Who is he?

A. At that time he was the senior operator in the Chicago office, that is, in point of service.

Mr. Richards was one of the men who met me when I passed through Chicago. He wrote me, he wired me, and he telephoned to me that the men were being——

353 Mr. LIVINGSTON. (Interrupting.) We object to any conversation with Mr. Richards about what was going on in Chicago.

Trial Examiner EICKHOFF. Objection overruled.

A. (Continuing.) As I said, he wired, wrote, and telephoned me that——

Mr. LIVINGSTON. (Interrupting.) May we ask, please, that the witness tell us first the conversation, which we have objected to, and when we come to the telegrams and letters we will have another objection to offer.

Mr. EDISES. Do you want to object now to everything he is going to say from now on until the time he gets through?

Mr. LIVINGSTON. Not unless, as a lawyer, I think it is objectionable. I have some conception of my obligations in this and in any other court.

Mr. EDISES. What is your specific objection?

Mr. LIVINGSTON. I have objected to conversations between Mr. Richards and the witness. That has been overruled.

Now, if there are to be any letters or telegrams, we will object to those upon the additional ground that they are the best evidence.

Trial Examiner EICKHOFF. State the substance of your conversation.

Mr. MERRICK. Has this a bearing on his dealings with the officers of the company?

Mr. EDISES. I think he is leading up to it; aren't you?

354 The WITNESS. Yes.

Mr. EDISES. Is it all right for him to go ahead, Mr. Examiner?

Trial Examiner EICKHOFF. Yes.

A. (Continuing.) My conversation with Mr. Richards was simply that the men at Chicago were having pressure put on them by the chief operator and the station manager because they had signified their intention of joining ARTA.

Mr. LIVINGSTON. We will move that this testimony be limited, subject to our other objection which has been denied, to prove the fact there was such a conversation, but not taken or considered as proof of anything that took place in the Chicago office.

Mr. EDISES. I think we are entitled to spread all of the facts on the record.

Mr. MERRICK. Facts.

Mr. EDISES. It is a matter of practical difficulty for them to dig up all those telegrams, so I think he ought to be able to tell the substance of them.

Trial Examiner EICKHOFF. At the present time I will admit it solely as evidence that such a conversation took place between these two, and what the substance of that conversation was. Later, if anyone desires that particular individuals involved may be held chargeable for it, why at that time it may have a wider scope.

355 By Mr. EDISES:

Q. Will you proceed, Mr. Loudermilk?

A. (Continuing.) As I say——

Q. (Interrupting.) Try to get at this as quickly as you possibly can.

A. The interruptions are so numerous I lose track of what I am saying. I have to think of what I am going to say next.

Trial Examiner EICKHOFF. You just testified the chief operator—that pressure was being put on the men.

Mr. MERRICK. No.

The WITNESS. No.

Mr. MERRICK. He said he received a message from the operator who said the chief operator was applying pressure.

Examination by Trial Examiner EICKHOFF:

Q. We had better go back again. What was the substance of this conversation with Mr. Richards?

A. Mr. Richards, who was one of the senior operators in the Chicago office, wrote to me first, telegraphed, and——

Q. Let's have the conversation first because these gentlemen want to segregate it.

A. The telephone conversation was to the effect that the men were being discriminated against and that pressure was being brought to bear on them by their supervisor and Mr. Strong, who was the manager at the Chicago office, because they had signified their intention of joining the ARTA.

356 Q. Did he state in what way pressure was being applied in this conversation, or did he merely say pressure was being applied?

A. The implication at that time was general. Later I——

Mr. LIVINGSTON. (Interrupting.) We object to implications.

By Trial Examiner EICKHOFF:

Q. We do not want the implications, just the conversation.

A. That was what I mean; that is, what he implied to me was general during the conversation.

Trial Examiner EICKHOFF. That is the answer to the conversation.

Mr. LIVINGSTON. We make the same objection with reference to limiting the purport of this testimony; that is, for the purpose which we moved a while ago and the motion was granted, and we will ask that the Examiner grant the same motion with reference to this answer.

Trial Examiner EICKHOFF. The same ruling.

Mr. MERRICK. I move that all the testimony be stricken out on the distinct basis that this defendant, respondent, as called in this proceed, Mackay Radio and Telegraph Company, a California corporation, does not operate in Chicago, and had nothing whatever to do with the operation of the office in Chicago, so anything that took place in that office is no more relevant in this proceeding than anything that may have taken place in the RCA office or the Globe Wireless.

Trial Examiner EICKHOFF. I am sorry, but I am unable
357 to see that at the present time. At the conclusion of the hearing, what you say may be right.

Mr. MERRICK. There is no evidence to tie up the Chicago office with this respondent. What is its relevancy to this proceeding?

Mr. EDISES. You are not denying——

Trial Examiner EICKHOFF. (Interrupting.) Just a minute! You are asking me questions again, Mr. Merrick.

Mr. MERRICK. I am objecting to testimony as to what happened in Chicago unless it is in some way tied up with this respondent.

Trial Examiner EICKHOFF. What do you object to, specifically, right now?

Mr. MERRICK. All that conversation, telegrams, or anything else, that he had with people in Chicago.

Trial Examiner EICKHOFF. Then it will be deemed objected to.

Mr. MERRICK. And you are admitting it even though this company has nothing whatsoever to do with the office in Chicago?

Trial Examiner EICKHOFF. Please do not ask me questions. I will rule on each question and objection as it is made.

What I am going to do is this: there are certain alleged violations of law charged here——

Mr. MERRICK. (Interrupting.) By this company.

358 Trial Examiner EICKHOFF. (Continuing.) Yes—and it is obvious to me that charges of this nature are difficult to prove. Accordingly, I am going into the circumstances, within reasonable limits, according to my own discretion, before, during, and after the period during which these alleged violations occurred.

Mr. MERRICK. I submit that any statements made by any person that is not an employee of this company, in any way, shape, or man-

ner, can not have the slightest relevancy on the questions involved in this case as to whether Mackay Radio and Telegraph Company, a California corporation, discharged or refused to re-employ the five men mentioned in this complaint because of union activities.

Trial Examiner EICKHOFF. We will see about that leter.

Mr. MERRICK. It is impossible that the activities of the employees of another company, the supervisors, or chief operator, or anybody else, can have any bearing upon whether or not this company discharged men for union activities.

Trial Examiner EICKHOFF. Suppose it was shown to be part of a concerted plan?

Mr. MERRICK. There is no offer to show it.

Trial Examiner EICKHOFF. Perhaps they will get around to that. You are putting me in a bad position. I do not know what evidence is coming along.

Mr. MERRICK. You admit evidence without any showing
359 or offering or promise by counsel to tie it up in any way.

Trial Examiner EICKHOFF. Counsel promises that it will be tied in or considered of no value.

Mr. MERRICK. I ask counsel to state now how he is going to tie up the activities of the men in Chicago with the respondent in this proceeding.

Mr. EDISES. Surely, Mr. Merrick——

Mr. MERRICK. (Interrupting.) I think that is enough of that argument. My objection still goes.

Mr. LIVINGSTON. I think we are entitled to ask the Examiner to direct counsel to say that he will or he will not tie this up by additional evidence. If he says he will not, then you are ready to rule now; if he says he will, then counsel has made his statement and if he is not able to do so, you may rule later.

I think that is the ordinary method in handling it.

Trial Examiner EICKHOFF. Is it your intention to introduce no evidence but what will have a bearing on some issue?

Mr. EDISES. I want to bring out all the activities of this man in connection with Mackay Radio. I think we are entitled to do it. I do not believe Mr. Merrick means to imply that the Mackay office in Chicago has no conceivable connection with the Mackay offices in San Francisco and in New York. Surely you don't intend to imply that?

360 Mr. MERRICK. No more so, as far as these people here are concerned, than the office that we communicate with in Shanghai and Tokio.

Trial Examiner EICKHOFF. We will proceed and you may state your objection to each question put and I will rule on it.

Mr. EDISES. Will you read the last question that I put to Mr. Loudermilk?

Trial Examiner EICKHOFF. I think we will take a recess at this time until 2 o'clock. It is after 12 o'clock now.

(Thereupon, at 12:10 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

361 AFTER RECESS

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner EICKHOFF. You may proceed.

Mr. EDISES. Mr. Loudermilk, will you take the stand again, please?

ALONZO B. LOUDERMILK, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Direct examination by Mr. EDISES:

Q. Have you related the substance of your activities on behalf of the ARTA in connection with the Mackay Radio Company in New York now, Mr. Loudermilk?

A. Did you say, "Have I?"

Q. Have you?

A. Not in their entirety.

Q. Well, you have related the substance of them. Is there anything, any other activity in which you engaged, in which you had dealings with the Mackay official in New York?

A. There was this matter of the claim of discrimination being shown the men at Chicago, which I took up personally with Mr. Tuel and Mr. Nivison, in New York, and we discussed the matter, the claim that the men had made in Chicago, of discrimination. They assured me that instructions would be given to the Chi-
362 cago manager that no discrimination was to be shown.

Q. Did you then return to Chicago?

A. Not until I completed ARTA business in New York, which was a matter of some ten days, during which time I had conferences with as many of the people of the New York Office as I could reach, both outside of the office and at the meetings held at the ARTA office.

Q. Have you finished now with your activities in New York?

A. In a very small way; yes.

Q. Well, you then went to Chicago, did you?

A. I did.

Q. Did you have anything to do with the Mackay officials in Chicago in connection with ARTA activities or your union work?

A. I called on Mr. Strong, who was the manager at Chicago, immediately on my arrival and conveyed to him the substance of the information Mr. Tuel had given me in New York regarding the no discrimination to be shown the men who wished to join the ARTA and told him of the reports that I had had regarding the discrimination.

Mr. MERRICK. I don't want to continue objecting, but I want to have it noted that—or make a general objection to any testimony from this witness as to happenings in Chicago, as they are not
363 in any way binding on this respondent and have no relevancy whatever to the issues here.

Trial Examiner EICKHOFF. What is the connection of Mr. Tuel with the company here?

Mr. MERRICK. Mr. Tuel is—was vice-president of this company.

Trial Examiner EICKHOFF. Have you a specific objection pending, or to just further questions along this line?

Mr. MERRICK. Anything further that doesn't—I said earlier I did not object to any testimony as to what conversations he had with officers of this company who were in New York, but I do object to any testimony that he may offer here as to conversations with people that are not in any way connected with this company.

Trial Examiner EICKHOFF. I will see what the further questions may be.

By Mr. EDISES:

Q. Will you proceed with your account of your discussions with Mr. Strong?

A. That was the subject——

Mr. MERRICK. (Interrupting.) This is what I object to.

Trial Examiner EICKHOFF. You object to that question?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. Objection overruled.

By Mr. EDISES:

Q. Go ahead.

A. There was no further discussion, other than that I have already stated, with Mr. Strong.

364 Mr. Strong told me that he personally had nothing to do with any discrimination.

I then held a meeting in Chicago with the men at that point who wished to join the ARTA. A meeting was held—do I have to give the name of the hotel?

Q. If you remember it.

A. I don't remember it. However, it was held, and there were nine men from that office and that area who joined the ARTA, who made out their applications and paid me their initiation fees. They brought to my attention, while I was there, a grievance——

Mr. LIVINGSTON. (Interrupting.) May we ask that he tell how, if the Examiner pleases.

Trial Examiner EICKHOFF. Yes. On what occasion and who brought that to your attention?

The WITNESS. At this meeting in the hotel, where they joined the ARTA, Mr. Richards and Mr. Hathaway——

Trial Examiner EICKHOFF. (Interrupting.) Who are they?

The WITNESS. Two operators from the Chicago office—and there were two other men from the transmitting and receiving station, and I don't remember their names, but I have their names on a record, but I don't now recall them, who made me acquainted with the fact that they had been working under conditions which they con-

365 sidered in violation of the NRA code at that time.

Mr. LIVINGSTON. We ask that that go out, first of all, what they considered violations, as being their conclusions; second of all, as being hearsay; third, not being binding on us; fourth, not having anything to do with his relations to the company.

Trial Examiner EICKHOFF. It is not binding on the company in any way, but merely a part of his account.

The WITNESS. They wanted to know what we could do about it immediately. So I visited the NRA—yes, the NRA Board in Chicago—to find out what the procedure was, and in case they wished to make a complaint, and secured the necessary blanks to fill out, and turned them over to these men and instructed them to fill them out; and after they had been filled out, to forward them to Mr. Tuel at New York to be called to his attention; and if no action was taken, that we would take the matter up with Washington, and the NRA Board at Washington, D. C.

By Mr. EDISES:

Q. You did that in connection with ARTA while you were in Chicago?

A. Right.

Examination by Trial Examiner EICKHOFF:

Q. Who was this company man that you talked with in Chicago?

A. Mr. Strong.

366 Q. What was his capacity then?

A. He was the manager of the Chicago station of Mackay.

Q. When you discussed the question of discrimination in this office with him, did he admit or deny there was any discrimination in that office?

A. He denied it.

Q. Did he deny any discrimination in the office?

A. Yes, sir.

Mr. LIVINGSTON. May we ask for an interruption while I confer with my associate counsel?

Trial Examiner EICKHOFF. Very well.

(Pause in the proceedings.)

Mr. LIVINGSTON. Thank you.

By Mr. EDISES:

Q. Did you then return to San Francisco?

A. I did.

Q. And did you apply for your old position with Mackay Radio here, or did you get your job back?

A. Yes; I got my job back.

Q. And did you have any conferences with any of the Mackay officials in San Francisco at about the time that you returned?

A. Yes; a short while after I returned—I should say a matter of two or three weeks; I don't remember exactly—I was called into Mr. Rodman's office, and Mr. Tuel was present. It was in regard

367 to charges that had evidently been filed at Chicago by the men at that point with the NRA Board.

Q. What was said and done at that meeting?
Mr. MERRICK. Fix the time.
Mr. EDISES. He said two or three weeks after he got back.
Mr. LIVINGSTON. When was that?
The WITNESS. I don't exactly——
Mr. EDISES. (Interrupting.) He didn't indicate the time.
A. (Continuing.) I got back in October—about, I believe it was, the 21st of October 1934.

By Mr. EDISES:

Q. And this meeting was two or three weeks after you got back?
A. That is my recollection. It may not be exactly correct.
Q. The early part of November?
A. I would say so.
Q. 1934?
A. Yes.
Trial Examiner EICKHOFF. Name all the parties present at that meeting.
The WITNESS. Mr. Rodman, Mr. Tuel, and myself.
Trial Examiner EICKHOFF. No one else?
The WITNESS. No one else.

By Mr. EDISES:

Q. What was said and done at that meeting?
368 A. Mr. Tuel wanted to know why I had advised these men to file charges with the NRA without taking the matter up with the company.

I told Mr. Tuel that I had not advised them to do that. I told them to write to him in New York, submitting the charges through our national office at New York, and to ask him that something be done to rectify the condition that existed, and if, in the event they refused to *to* do anything, then that they were to file the application with the NRA.

However, they did this, that is, the men in Chicago forwarded the application to our New York office, but President Haddock of the ARTA was in Washington, D. C., and then other points of the country, and did not take direct action on it immediately, and the men became tired waiting and filed the applications themselves; that is, I presume they did. I don't know whether they filed them or not.

Trial Examiner EICKHOFF. You mean they filed the complaints?
The WITNESS. Yes.

By Mr. EDISES:

Q. Are you through with your statement now in regard to that?
A. Yes.
Q. Was this meeting with Mr. Rodman and Mr. Tuel called at their request or yours?
369 A. At their request. I was asked to come to the office.
Q. Did you have any further meetings or conferences with them other than——

Trial Examiner EICKHOFF. (Interrupting.) Are we through with everything that took place at that meeting?

The WITNESS. I am not.

By Mr. EDISES:

Q. Go ahead and tell us anything further.

A. Well, it was the opinion at that time——

Mr. MERRICK. (Interrupting.) Can we have the witness instructed to state what the conversation was?

Trial Examiner EICKHOFF. State what took place at this meeting, what was said back and forth.

A. (Continuing.) Both Mr. Tuel and Mr. Rodman, particularly Mr. Tuel—Mr. Rodman didn't have a great deal to say—more or less accused me of filing these charges myself in Chicago, and they thought that I was directly responsible for it.

I admitted that I was the one that investigated with the NRA Board to find out what should be done, and I told them my entire connection with it in Chicago, but I don't believe they thought I was entirely innocent of the filing of the charges.

The discussion lasted for an hour or more, and it was along that vein. They wanted to know if I thought I had done a fine
370 thing, in other words, to file those charges without allowing the company time to look into them, and so forth. And naturally I had to say that I didn't know, because I had nothing to do with the actual filing of the charges.

At that time, at this meeting, they were both more or less riled up at me over the idea that I had failed these charges.

By Mr. EDISES:

Q. Have you told the substance of what went on at that meeting?

A. Yes, sir.

Trial Examiner EICKHOFF. What was the upshot of the meeting, if anything?

The WITNESS. Nothing further than that discussion at that time. I don't know whether I convinced them that I hadn't played behind their back, or whether they just didn't know for sure what to do, but they didn't do anything, evidently.

By Mr. EDISES:

Q. Was anything further said at that meeting?

A. That was all.

Q. Did you have anything to do with the preparation of the proposed national point to point agreement that was prepared by Local No. 3 during the period February 1935 to the middle of 1935?

A. I was the one who brought the matter out, that is, the method in which this was to be drawn up, because Mr. Tuel
371 had talked to me in New York with reference to such a proposal, and had said that the most logical way for us to do it would be to bring in all the officers in the United States, get the consensus of all their opinions as regards to wages and working condi-

tions, and so forth, and to submit it at one time so that they could deal with it at one time through our officers of ARTA in New York.

Q. Did you have anything to do with the company in connection with the negotiations surrounding that proposed agreement?

A. I did not.

Q. Were you present—strike that.

Examination by Trial Examiner EICKHOFF:

Q. Before you go to your next question—you say you brought this out. You brought out the idea which resulted in the preparation of this agreement, or did you bring out a draft?

A. I brought out the idea.

Q. The idea.

A. Then they went to work on it.

Q. Did you participate in the activities in connection with learning the wishes of the other locals and in drafting the agreement?

A. No; I didn't participate in this other than submit my own personal thoughts.

372 By Mr. EDISES:

Q. Was that all——

Mr. LIVINGSTON. (Interrupting.) May I interrupt? I don't know, Mr. Edises, whether we requested you to let us have a copy of the proposed agreement to which reference has been made. If not——

Mr. EDISES. (Interrupting.) You did.

Mr. LIVINGSTON. I would like to have it.

Mr. EDISES. And the agreement is here now. Do you want to look at it now?

Mr. LIVINGSTON. Yes; I would like to have it.

Mr. MERRICK. Will you make a statement as to what date this draft is as of? I understand changes were made from time to time. Is this the final one presented September 20, or whenever it was?

Trial Examiner EICKHOFF. Can this witness identify it?

Mr. LIVINGSTON. Mr. Edises' statement of identification will be sufficient for us. If he says it is authentic, we will accept that.

Trial Examiner EICKHOFF. We want to be sure it is right, though.

Mr. LIVINGSTON. I don't think he would say it is right unless it is.

Trial Examiner EICKHOFF. He might be mistaken.

Mr. EDISES. Are you going to introduce this (indicat-
373 ing copy of agreement referred to) as an exhibit?

Mr. LIVINGSTON. I don't know.

Mr. EDISES. I understand it is the last copy that they have on file.

Mr. LIVINGSTON. We will be responsible for the safety of it.

Mr. EDISES. We will have an opportunity to look at it as we have occasion to, I suppose.

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. Do you want it marked?

Mr. LIVINGSTON. Not necessarily.

(Whereupon counsel Edises handed to counsel Livingston copy of the agreement heretofore mentioned.)

By Mr. EDISES:

Q. Did you have any connection with the calling of the strike which was called on October 4, 1935? Did you have anything to do with that?

A. No; other than to vote upon the strike vote that was taken. I had the opportunity to vote.

Q. Were you present at the meeting on October 4 at which time a telephone call was placed to New York to Mr. Salisbury and Mr. Pyle?

Mr. MERRICK. He testified to that.

The WITNESS. October 4?

By Mr. EDISES:

Q. Yes.

A. I didn't testify to being present at a telephone call
374 on October 4.

Q. I am referring to a telephone conversation about 9 o'clock on the evening of October 4, 1935. Do you recall that when you were called on the stand before, you mentioned a telephone conversation?

A. The telephone call that I referred to at that time that I was on the stand before, was on Monday, October 7, at 9 o'clock.

Q. Monday, October 7?

A. Yes.

Q. Correct; my mistake. What did you do on the evening of October 7, 1935, after you had had that telephone conversation with New York, with Mr. Salisbury in New York?

A. Well, that call, the call was placed at 9 p. m., and the conversation was through about 9:15. I remained in the union hall in general discussion with several of the members for a few minutes. Then I went on the picket line at 10 o'clock, 10 p. m.

Q. How long did you remain on the picket line?

A. Until midnight.

Q. And then what did you do?

A. I went home and went to bed.

Q. From the time that you left the picket line, rather, I should say from the time that you left the union hall until the time
375 that you went home, did you have any conversation with Mr. Hatch?

A. No.

Q. With Mr. McLaughlin?

A. No.

Q. With Mr. Burtz?

A. No.

Q. Did any of those gentlemen tell you about a meeting that was to be held at the Hotel Bellevue that night?

A. No, sir.

Q. After you went home did you receive any message of any kind, have any conversation with Mr. Hatch, Mr. Burtz, or Mr. McLaughlin in regard to a meeting at the Bellevue Hotel?

A. I did not.

Trial Examiner EICKHOFF. Did you have any conversation with any one about such a meeting?

The WITNESS. Yes. Two members of the ARTA came to my apartment.

By Mr. EDISES:

Q. Who was it?

A. They were Mr. C. V. Parker and Mr. Chambers.

Q. What time did they come to your apartment?

A. Well, they woke me up, I believe it was about 1 o'clock or 1:30; I am not exactly sure as to that time.

Q. What did they tell you?

A. They told me that some one was calling up all the members telling them they were going to have a meeting down
376 at the Bellevue Hotel, and that I had better go down there to see what it was about.

Q. Did they say anything else about that meeting, what it was called for?

A. I asked them what it was about, and who called it, and why it was called, and so forth, but they didn't seem to know. All they knew was that some one had called up several members and requested that they come to the Bellevue Hotel.

Q. What did you do then?

A. Well, I got up and dressed, and went down to the Bellevue Hotel.

Q. Do you remember what time you got there, approximately?

A. Around 2 o'clock, I suppose.

Trial Examiner EICKHOFF. A. M.?

The WITNESS. A. M.; in the morning.

By Mr. EDISES:

Q. That was the morning of October 8?

A. Yes, sir.

Trial Examiner EICKHOFF. The strike was then in progress?

The WITNESS. Yes.

By Mr. EDISES:

Q. What did you find when you arrived at the Bellevue Hotel that morning?

A. Well, when I got there I went up to the desk and I asked the desk clerk what room they were holding the meeting in. He
377 told me the number of the room, which I don't remember.

Trial Examiner EICKHOFF. How did you refer to the meeting—do you recall?

The WITNESS. I said, "Is there a meeting being held here?"

Trial Examiner EICKHOFF. You didn't say what kind of a meeting.

The WITNESS. He evidently knew all about it because he said, "Yes; the boys are in room so and so."

By Mr. EDISES:

Q. What did you do then?

A. The three of us got in the elevator.

Q. Who were the three of your?

A. Mr. Chambers, Mr. Parker, and myself.

Q. Yes.

A. And we went upstairs to the door of the room where the meeting was being held.

I said, "Let's not go in immediately. Let's see if we can hear what is being said. After all, we don't know what this meeting is about."

Q. By the way, did you see any men outside in front of the hotel before you went in?

A. Not the first time that I went there.

Q. Go ahead.

A. You refer to members of our organization?

Q. Members of the ARTA Local; yes.

378 A. No; I didn't see any the first time I went in.

Q. Go ahead.

A. And we stood in the hall outside the door, and listened to see if we could hear what was being said, and we heard some conversation.

Q. Why were you reluctant to go right in?

A. Because I didn't know; no one had any authority to call a meeting at the Bellevue Hotel—members of ARTA—and I didn't see any reason why I should be in there. After all, there had been a regular meeting of the ARTA all during the strike, each morning at 10 a. m., and there was to be another one at 10 a. m. on Tuesday morning, and I had no reason to attend a meeting held at 2 o'clock in the morning at the Bellevue Hotel.

Q. Did you hear anything when outside the door there?

A. I heard some discussion——

Trial Examiner EICKHOFF. (Interrupting.) Could you understand the voices?

The WITNESS. I could.

Trial Examiner EICKHOFF. Tell us whose voices you heard then.

The WITNESS. I heard Mr. McKercher.

By Mr. EDISES:

Q. Who is he?

A. A supervisor at the H. B. office. I heard him say, "I told

379 them they couldn't win a strike like this six months ago."

There was some further discussion.

Q. Did you hear any other voices?

A. I heard Mr. Jorgensen's voice, and he said, "Well, if they get tough, we will get just as tough as they will."

Q. You are sure it was Jorgensen's voice?

A. I am sure of that.

Q. Did you hear anything else?

A. That is all I remember hearing.

Q. What did you do then?

A. I said to the men with me, Mr. Parker and Mr. Chambers, "We have no business here. Let's get away from here."

We walked down the hall a few feet to the elevator and rang the bell. At that time in the morning the elevator service evidently isn't very good, so we waited five minutes before the elevator came. While we were waiting the door where they were holding this meeting, opened, and several men came out.

Q. Who were they?

A. There was Mr. Jorgensen, Mr. McKercher, Mr. Hatch, Mr. Burtz, and Mr. Olsen.

Q. Anybody else?

A. I don't remember any one else.

Q. Well, then what did you do? Did you go down the elevator?

380 Mr. MERRICK. All you have identified was all the men that came out after the meeting?

Mr. EDISES. He is referring, apparently, to before the meeting itself.

Mr. MERRICK. He has gone back again?

The WITNESS. No.

Mr. MERRICK. What time is this?

Trial Examiner EICKHOFF. This is about five minutes after he left the door of the room, the door opened and these men walked out; is that it?

The WITNESS. Correct.

By Mr. EDISES:

Q. What happened then?

A. We got into the elevator, all of us together, and no one spoke to me; no one said anything to me about what they were doing, or why, and we went downstairs and walked out of the building in each other's company, but no one spoke to any one.

Q. Do I understand you to say you went down in the elevator with the men you just mentioned?

A. Yes.

Q. Did any one of them say anything to you about a meeting?

A. They did not.

Q. What did you do then?

A. After we left the Bellevue Hotel I got in my car and drove down to the union headquarters.

Trial Examiner EICKHOFF. Who?

381 The WITNESS. Mr. Parker, Mr. Chambers, and myself.

By Mr. EDISES:

Q. Then what did you do?

A. I thought that there possibly would be some union members present at the hall.

Mr. MERRICK. We object to what he thought; just his conversation.

Trial Examiner EICKHOFF. Yes; not what prompted you to do it, but what you did.

A. (Continuing.) I expected to find some members present——

By Mr. EDISES:

Q. Just a minute. What did you do? Just tell us what you did after you left the union hall.

A. After I left the Bellevue Hotel, you mean?

Q. Pardon me. I thought you had arrived.

A. I went to the union hall. And there were one or two members present there. The only one I remember the name of was Mr. Barlow.

Q. Do you remember what time you got to the union hall?

A. No; I don't know. It was maybe 2:15. I don't know for sure.

Q. Go ahead.

A. And Mr. Barlow was there, and I asked him, "How did you find out about this meeting being held?"

He said that Mr. Poy, another operator at the H. B. office, had phoned to me and told him that somebody had called him advising him of a meeting.

382 I said, "Why didn't you go up to the Bellevue Hotel then?"

He said, "I have no business at the Bellevue. I am here at the ARTA headquarters if there is going to be any meeting held."

We waited around the ARTA headquarters for a short while and no one else came, so we decided we would go back to the Bellevue Hotel and find out what they were doing. As a matter of fact, I suggested that we go there and picket the Bellevue Hotel to keep our members from going in to any meeting.

Then we went back to the Bellevue Hotel.

Q. May I interrupt for a moment to go back a bit? After you left the Bellevue Hotel the first time, did you notice what Mr. Jorgensen and his group did after they got out of the elevator?

A. No; other than that they walked out of the front door and separated in different directions. I don't know what else they did.

Q. Did you notice any particular persons going off together?

A. I didn't particularly notice it; no.

Q. Go ahead with your story.

A. We went back to the Bellevue Hotel from the ARTA headquarters. I drove up in front of the Bellevue Hotel and parked my car.

383 There were, at that time, quite a number of the members of ARTA there.

Trial Examiner EICKHOFF. On the sidewalk?

The WITNESS. On the sidewalk. I should say there were twelve or fifteen men.

I got out of my car—there were about three police cars there also. We had quite a congregation.

I asked the sergeant, I said, "Why are these police cars here?"

He said, "We are here to conduct the men down to 22 Battery Street."

I said——

By Mr. EDISES:

Q. What is 22 Battery Street?

A. That is the office of Mackay Radio.

I said, "How do you know they are going to 22 Battery Street?"

He said, "We don't know it, but we were told to be here to take them down there."

Q. Did he say who told him to be there?

A. No.

Examination by Trial Examiner EICKHOFF:

Q. Did he say what men?

A. No.

Q. Just some men?

384 A. Just said the men were going to 22 Battery Street and they would have to conduct them down there.

Several of the members who were present on the sidewalk at that time wanted me to go to the room where they were holding this meeting to attempt to protect our interests.

Q. By "our" you mean the interest of ARTA?

A. Yes, sir; ARTA and themselves. So I decided that I would go up there and see what I could do.

I naturally tried to get the men to leave there and go back to the ARTA headquarters, rather than go into a meeting of that kind.

By Mr. EDISES:

Q. When did you try to get the men to do that?

A. As soon as I arrived there.

Q. As soon as you arrived on the sidewalk in front?

A. Yes.

385 Q. As soon as you arrived on the sidewalk?

A. Yes.

Q. Then you went upstairs to the meeting?

A. I went upstairs to the room where the members were congregating to hold this meeting. There were two rooms, and when I walked in there were—oh, between ten and fifteen men present.

Q. When you——

Trial Examiner EICKHOFF. Let him describe this occasion, unless there is some interruption.

Mr. EDISES. Very well. Go ahead.

A. I asked Mr. Jorgensen, who was present, if he would step into one of the rooms with me to have a little discussion. He agreed to that.

We walked into the one room, and the men remained in the other room. We had quite a lengthy discussion. The substance of it was: Why—What is the nature of this meeting, who has called it, what are you attempting to do, and what part are you playing in it?

Mr. Jorgensen said that he personally did not know anything about it. He was asked to attend.

By Mr. EDISES:

Q. Did he say by whom?

A. He did not. I said, "What are you attempting to do here?" He said, "I want to get the men to go back to work." I said, "Do you mean by that you want everyone to come back to work
386 without any discrimination shown, that you will accept every one?"

He said, "No; there are some men we will not allow to return to work." I said, "I naturally assume that I am one of those men?" He said, "You are correct in your assumption."

I said, "Mr. Jorgensen, I don't know how many men you have on the list, or if there was a list, but you have stated there are some men who will not be allowed to go back to work. Are you going to ask these other men to deliberately put themselves in the position that they would consider untenable for the rest of their lives by deciding to go back to work and leave these men without jobs?"

He said, "Yes; we won't take these other men back."

I said, "Why are you doing a thing like this?"

"Why," he said, "It must be perfectly obvious to you that this union must be broken up."

Q. Was anything further said by either of you at that time, Mr. Loudermilk?

A. I am trying to recall. Naturally, there were many things said, but they were all on this same subject which I am speaking about now. That was probably the substance of the entire conversation.

Q. Were you and Mr. Jorgensen alone at the time of this conversation?

A. We were.

387 Q. You say you were drawn into the other room? That there were two rooms?

A. Yes.

Q. What did you do then, Mr. Loudermilk?

A. Well, so many men had arrived in there, one small room, that they were flowing into the other room almost, so we had to break up our discussion and we had all the men come in and circulated between the two rooms. Each one came in and found a place on the floor or the arm of a chair or some place to park.

Someone asked—I believe it was myself—as a matter of fact, it was—"What are we waiting for? How long are we going to sit around here?"

Mr. Hatch said, "We are waiting until we can get the men that we have telephoned to, and notified of this meeting. We are waiting until they arrive."

I said, "Have you notified everyone?"

He said, "Everyone that we could."

"Well," I said, "No one notified me."

That is, that the meeting was being called. I heard about it rather indirectly, and I asked him, "Where are some of the other men who are involved here?" and I named several names.

They weren't present, and evidently they were not notified either.

388 Mr. LIVINGSTON. Will that go out, "evidently they were not notified either"?

Trial Examiner EICKHOFF. Strike out "evidently they were not notified either."

A. (Continuing.) But after waiting around the room for approximately an hour, I should say, there were finally some 36 men present. These 36 men included four supervisors and three or four service clerks.

Examination by Trial Examiner EICKHOFF:

Q. Can you name them?

A. I can name the supervisors and service clerks. The supervisors were Mr. McKercher, Mr. Buckley, Mr. Layman, and Mr. McLaughlin.

Q. Had any of them been out on strike?

A. They had all been out on strike—yes.

Q. How about Messrs. Hatch and Jorgensen?

A. Well, Mr. Jorgensen was the chief operator. He was present, too.

Q. Had he been out on strike?

A. No.

Q. Hatch?

A. Mr. Hatch had been out on strike. He was a member of the ARTA.

Q Will you name some others who were present?

A. The clerks were Mr. Olsen, Mr. Arminini—I can't recall
389 the other man's name.

By Mr. EDISES:

Q. Were these clerks members of the union?

A. They were associate members.

Trial Examiner EICKHOFF. Were any of the strike captains there?

The WITNESS. Mr. Olsen is not a member of the union. The strike captains? Well—I was present.

By Mr. EDISES:

Q. Was Mr. Rone present?

A. Mr. Rone was not present.

Q. Was Mr. Phelps present?

A. I don't believe Mr. Phelps was present.

Q. Mr. Bash?

A. No.

Q. Palmer?

A. Mr. Palmer was present.

Q. Go ahead.

Examination by Trial Examiner EICKHOFF:

Q. Did you have any standing committee at that time?

A. Of what nature?

Q. In your local—your TP—or PTP group?

A. You mean a strike committee?

Q. Well, at that time was there any grievance committee, public relations committee, or strike committee, or anything of that sort in existence?

390 A. There was a Relations Committee in existence.

Q. Were any of that committee present at this gathering of the members at the Bellevue?

A. One, I believe, Mr. Martinelli—I believe; I am not positive. I believe he is a member of the Relations Committee, but Mr. Martinelli was present.

Mr. LIVINGSTON. If the Examiner pleases, in order to clarify, will the Examiner request the witness to tell him, is the Relations Committee the same as above named—Loudermilk, Palmer?

Trial Examiner EICKHOFF. You may deem that a question of the Examiner.

The WITNESS. No, not the same one. There was an intervening matter which changed the personnel of the Relations Committee.

Trial Examiner EICKHOFF. Do you know what the personnel of the Relations Committee was on this particular day?

The WITNESS. I do not; no.

By Mr. EDISES:

Q. Wasn't there a strike committee elected, Mr. Loudermilk?

A. There was a strike committee elected at the meeting held on the evening of Friday, October 4, at the ARTA headquarters, and I did not attend that meeting.

Trial Examiner EICKHOFF. Have you any other knowledge which would enable you to state the personnel of that committee?

391 The WITNESS. Nothing, other than the minutes of that meeting which I have seen.

Trial Examiner EICKHOFF. Do you recall what they showed?

The WITNESS. I remember only what——

Mr. LIVINGSTON. (Interrupting.) Have you the minutes?

Mr. EDISES. We have the minutes of that meeting, Mr. Examiner.

Mr. LIVINGSTON. For the purpose of answering the Examiner's question; namely, "What do the minutes show?" I suggest that you read the list from the minutes, subject to correction if the Examiner agrees.

Mr. EDISES. Is that agreeable?

Trial Examiner EICKHOFF. Yes.

By Mr. EDISES:

Q. I am reading from the minutes.

Trial Examiner EICKHOFF. Show it to the witness and ask him to identify it.

Mr. EDISES. Surely.

Trial Examiner EICKHOFF. Are those the minutes of that meeting to which you refer?

The WITNESS. Yes.

Trial Examiner EICKHOFF. Will you read the portion pertaining to the appointment of that committee?

Mr. LIVINGSTON. May I look at these minutes?

Trial Examiner EICKHOFF. Before answering, let Mr.
392 Livingston look at them.

Mr. LIVINGSTON. That list will now be read as the strike committee?

Mr. EDISES. I presume so.

The WITNESS. I understand there is a resolution concerning the appointment——.

Mr. LIVINGSTON. (Interrupting.) There is an election of the strike committee, the nominations were made, and the nominations closed; that became a committee by motion, so I suggest that counsel read the list. It will be perfectly satisfactory.

Trial Examiner EICKHOFF. Will you want these minutes in later for any other purpose?

Mr. EDISES. I believe——

Mr. LIVINGSTON. (Interrupting.) We have called for them.

Mr. EDISES. Mr. Livingston has asked for them.

Mr. MERRICK. We want the minutes.

Trial Examiner EICKHOFF. You may want to cross examine from them?

Mr. EDISES. I have no objection to bringing them into evidence now.

Mr. LIVINGSTON. We suggest that the minutes themselves will not be properly in evidence at this stage of the game. There is nothing to connect us with those minutes, nor to connect these people with those minutes. At this time, if I may suggest, that counsel
393 read the names of the strike committee, which is our sole inquiry, and let's find out at some other time if they are going to be material.

Trial Examiner EICKHOFF. My understanding is that you wanted the best evidence as to what took place at this meeting. We have the minutes here.

Mr. LIVINGSTON. The best evidence of the people elected to this committee is the list as shown by the minutes. We have suggested that that be read in order to expedite matters. Now, if the minutes are going in as the Government's exhibit, I suggest that in the interest of time, clarity, and orderliness that we don't put in the minutes of October 4, and go back to the minutes of 1934, but we take the minutes up in order. If the Government prefers—the Board—pardon me, if the Board prefers otherwise, it makes no difference. I am merely trying to help it along.

Trial Examiner EICKHOFF. I thought, as long as we were touching it for one purpose, we'll put them in.

Mr. LIVINGSTON. All right, if you wish; but it makes it harder.

Mr. EDISES. I wish to introduce into evidence as Board's Exhibit No. 1——

Trial Examiner EICKHOFF. "A."

Mr. EDISES. Yes. Exhibit A.

(Discussion off the record.)

Mr. EDISES. I withdraw the list from evidence at this—

394 Trial Examiner EICKHOFF. Will you read?

Mr. EDISES. I am reading from the minutes of the 22nd meeting of the San Francisco point to point local of the ARTA, held at San Francisco, California, October 4, 1935, at 8:27 p. m.:

"Brother Stocklin suggests that a strike committee be selected to deal with the various situations arising.

"Brother Bash calls for nominations for committeemen. These men will, by relieving each other, maintain a continuous watch at the ARTA office and M. X. and L. O. will maintain a similar service, remaining at their own locations.

"Brother McGeorge nominates Brother Henderson. Brother Kroll nominates Brother Stocklin.

"Brother Stocklin nominates Brother Palmer. Brother McGeorge nominates Brother Bash. Brother Clifford nominates Brother O. P. Parker.

"Brother Stoughton nominates Brother Lee.

"A vote is taken on the above men of the strike committee. In favor, 23; against, none."

Examination by Trial Examiner EICKHOFF:

Q. Now, which of those men, if any, were at this Bellevue meeting?

The WITNESS. Palmer was the only one you have read off there.

By Mr. EDISES:

Q. Let me just read them rapidly again.

A. Yes.

395 Q. Henderson?

A. Yes.

Trial Examiner EICKHOFF. Show him the list.

Mr. EDISES. All right. [Counsel shows list to witness.]

A. The only man of this strike committee who was present at the meeting in the Bellevue Hotel was Mr. Palmer.

Trial Examiner EICKHOFF. So far as you know? While you were there?

The WITNESS. I was there all the time.

Trial Examiner EICKHOFF. Proceed to describe what took place at the meeting.

The WITNESS. There were 36 men in attendance. As I stated, there were four supervisors and three check clerks that I know of. The balance of the men were operators. In other words, we'll say there were 25 operators present, if there were that many. I knew that there were a total of some fifty odd men involved, operators alone, in the Mackay H. B. office. I repeatedly asked everyone present, particularly Mr. Hatch and Mr. McLaughlin, who were evidently conducting the meetin, "Where are the rest of these men who were

invited in this meeting?" and why we weren't being brought to the meeting. I also asked repeatedly why no one at the stations Palo Alto and Lobitos were present, and similar questions, and
396 point out to them that they did not have a right to call a meeting of this type.

Trial Examiner EICKHOFF. Was there any answer to those questions?

The WITNESS. The answer I received from Hatch was this: "This is a meeting which is being called for the benefit of the men in the H. B. office, and is not an ARTA meeting. It has nothing to do with the union."

I said, "You have no authority to call such a meeting."

He said, "We are doing so."

After quite a time when no one else further arrived from the number I have mentioned to attend this meeting, there was an address made by Mr. Hatch, at which he said, "Naturally we should carry this meeting out in a fine manner."

In other words, he meant we should have it done in order, so they wanted to have someone appointed chairman of the meeting. No one said anything. Mr. Hatch suggested that Mr. McLaughlin be nominated chairman of the meeting. As no one else dissented, Mr. McLaughlin accepted the chairmanship and then he addressed the men present.

He pointed out to the men that a strike had been called and without the people being properly notified, and that nothing would be done; and that the officers of the union had misled them into believing this, that, and the other thing.

Mr. LIVINGSTON. We ask the witness to tell us what is meant by "this, that, and the other thing."

397 Mr. EDISES. Yes.

Mr. LIVINGSTON. Through counsel.

Trial Examiner EICKHOFF. Go ahead.

By Mr. EDISES:

Q. Go ahead with your story.

A. Such stories, for instance, that 84 men out of a possible 93 had gone back to work in the New York office. He said we had withheld that information from the men. That was not information that we knew of.

Trial Examiner EICKHOFF. Just repeat what he said.

The WITNESS. Well——

Trial Examiner EICKHOFF. Just repeat what he said, without comments on it.

The WITNESS. And he referred to the impending arrival, on the following day of nine scabs from New York, and liked to show that we had not informed the membership that the company was in a position to send the men out here and break the strike for us, if they didn't do something before the scabs arrived, it would be too late to do anything.

I interrupted Mr. McLaughlin several times and pointed out some of his errors, and asked him why we couldn't withhold this meeting until 10 a. m. on the following morning at ARTA headquarters, when we would no doubt have some word from our national officers in regard to their conversation with Mr. Stone.

He said they were not going to wait until the scabs
398 arrived, but they were going back to get their jobs before the scabs got there, if possible. So, he explained that the men were going back to—were going to be allowed to go back to work. There was nobody—nobody was going to be discriminated against. Everybody could have their jobs back, but with the exception of eleven men.

By Mr. EDISES:

Q. Are you quoting Mr. McLaughlin now?

A. I am quoting Mr. McLaughlin now—and he said, "Now, Mr. Jorgensen will read to you the list of the men who are banned from returning to work. If you men wish to go back to work without these men you may do so, but they can not come back to work with you." Then he read off the names of the eleven men.

Q. Who read off?

A. Mr. Jorgensen read off the names of the eleven men.

Trial Examiner EICKHOFF. Do you recall those names?

The WITNESS. There was Mr. Palmer, Mr. Bash, Mr. Salisbury, Mr. Rone, Mr. Loudermilk, Mr. S. York, and Mr. Patterson, Mr. Humphries, and Mr. Dwyer—how many is that?

By Mr. EDISES:

Q. That is nine. Was Mr. West's name on that list?

A. Mr. Westcott.

Q. Westcott—is that it?

A. Yes.

Q. Was Mr. Hardin's?

399 A. Yes; Mr. Hardin.

Examination by Trial Examiner EICKHOFF:

Q. Did either of these gentlemen, Mr. McLaughlin or Mr. Jorgensen, claim any authority to make such statement?

A. I asked them why this list had been compiled. I asked Mr. Jorgensen repeatedly. He said he had had nothing to do with that; that it was prepared for him.

Q. Did he say by whom?

A. No; merely said prepared for him.

Q. Did you ask Mr. McLaughlin a similar question?

A. No.

Q. When it came to the list, Mr. McLaughlin referred the matter to Mr. Jorgensen?

A. Correct.

By Mr. EDISES:

Q. Who was Mr. Jorgensen?

A. Mr. Jorgensen is the traffic chief of the H. B. office.

Q. Is he an official of the company?

Mr. MERRICK. I object to this.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Is he in charge of the operating room?

Mr. MERRICK. (Interrupting.) Do I understand you are going to call him to the witness stand?

Trial Examiner EICKHOFF. Can it be stipulated what his capacity was?

400 Mr. MERRICK. His title is traffic manager.

Trial Examiner EICKHOFF. At that time?

Mr. MERRICK. At that time. In other words, he has been referred to previously as chief operator. It is the same office—one time chief operator, another time traffic manager.

Mr. EDISES. Can we stipulate as to whether or not his duties include hiring and firing, recommendations for hiring and firing?

Mr. MERRICK. Well, I would rather not enter into any more stipulations unless necessary, particularly as to the testimony of witnesses that are going to be called later.

Trial Examiner EICKHOFF. Will Mr. Jorgensen be on the stand later?

Mr. MERRICK. Mr. Edises has notified me to have him ready as a witness for the Board. I have told him he will be ready, so I anticipate he is going to be a witness for the Board. I suppose you will bring out through him what his duties are. Mr. Rodman, his superior, has been requested to appear. He can testify what his duties are, his powers are.

Mr. EDISES. I have no objection to proving it that way. It might save time——

Mr. MERRICK. (Interrupting.) I don't think it will save time to go into stipulations as to what his duties and powers are.

401 Trial Examiner EICKHOFF. We can get at that later.

By Mr. EDISES:

Q. Will you proceed with your discussion?

A. Well, the list—the names of the eleven men were read off and they were, as I say, informed that these men would not be allowed to come back to work. There was some further discussion.

Q. What was that discussion?

A. Oh, it was general. I don't recall what it was about. I know that once or twice I myself said, "You are not going to ask these men to go back to work and leave the others without jobs just because you want your jobs?"; but no one paid much attention to that. However, they finally asked that a vote be taken.

Q. Who asked that?

A. Mr. Hatch said, "Let's take a vote now and see whether we are going to go back to work."

I said, "Wait a minute. Are you going to vote with the men in this office or give the rest of the men in the organization a chance to vote?"

He said, "This has nothing to do with the rest of the organization. This is a meeting of the men who were present, and the men who were at the H. B. office, who wished to be present. If they want to go back to work, that is their business."

I said, "These other men on the outlying points, and who
402 will be on strike have no alternative than to feel that we have gone back to work without notifying them."

"I don't care how you interpret that; the fact is these men here are going to vote on whether we go back to work or not."

Q. Was there anything else said?

A. Yes; I asked if the other men were going to be allowed to vote whether they wished to go back to work or not.

He said, "They will be allowed to vote."

Q. Who said?

A. Mr. Hatch and also Mr. Jorgensen. I asked if the other men at M. X. and Palo Alto would be allowed to vote, and he assured me that they would be allowed to vote.

Q. Would, or would not?

A. Would be allowed to vote at some time in the future.

Trial Examiner EICKHOFF. Just a minute ago you said that the leaders of that meeting said that was a meeting of those present——

The WITNESS. (Interrupting.) Yes; that is correct.

Mr. EDISES. I believe he quoted Mr. Hatch saying that he is now quoting Mr. Jorgensen.

The WITNESS. In other words——

Mr. LIVINGSTON. (Interrupting.) He is quoting both Mr. Hatch and Jorgensen, if the Examiner pleases. He is purporting to quote both Mr. Hatch and Mr. Jorgensen.

Trial Examiner EICKHOFF. That was my understanding.
403 Mr. LIVINGSTON. That is correct according to the record.

By Mr. EDISES:

Q. Who made the statement regarding the other men at the outlying offices?

Mr. LIVINGSTON. Objected to as having been asked and answered.

Trial Examiner EICKHOFF. That is clear in the record. What isn't clear to me is, what in the world is meant by that.

Examination by Trial Examiner EICKHOFF:

Q. Was any explanation made of how, or in what manner they would vote?

A. No further than what I have made just now, myself.

Q. And the question before the Bellevue meeting was whether they would return to work?

A. That is correct. So a vote—a ballot was taken, and each man was given a slip of paper. I asked that each man append his name to that slip of paper to show how he had voted, and I was shouted down on that. They said to me——

By Mr. EDISES:

Q. You were shouted down by whom, Mr. Loudermilk?

A. Principally by Mr. Hatch and Mr. McLaughlin. So they took the votes.

Mr. LIVINGSTON. Does that mean——

Mr. EDISES. (Interrupting.) If you want to ask questions, why not wait until the cross examination?

404 Mr. LIVINGSTON. Well, I won't interrupt.

The WITNESS. Where was I?

Trial Examiner EICKHOFF. You were just shouted down by Mr. Hatch and somebody else.

By Mr. EDISES:

Q. Proceed now and tell us about how this voting was conducted, and so on.

A. There were little bits of paper torn from a piece of paper in the Bellevue—writing paper—and each man was given one of these, and he was supposed to write either "Yes" or "No," or leave it blank, after the question, "Are you prepared to go back to work immediately and leave 11 men out on a limb?"

The papers were passed around, then they were put into the hat, and the hat was turned over to Mr. Martinelli.

Q. Just one moment, please. What was the blank supposed to represent?

A. The blank was to represent the people who didn't want to vote one way or the other.

Q. Was their vote not to be counted as a part of the majority?

A. That is correct. There was some discussion prior to the vote being taken as to what would constitute a majority. Some wanted a two-thirds, others wanted a bare majority of 51 percent. They finally arrived at a decision, that 51 percent would be sufficient, or a majority.

405 So the ballots were turned over to Mr. Martinelli who took them out of a hat and read them off, either "Yes" or "No" or a blank; and somebody else recorded them on a piece of paper. I don't know who that was. When it was finally over, the vote, as I remember, there was 22 who voted "Yes"; there were six who voted "No"; and there were eight blanks.

At the completion of the ballot Mr. Hatch hollered "Hooray! Let's all go down and get our names on the pay roll."

Examination by Trial Examiner EICKHOFF:

Q. One minute, Mr. Loudermilk. Was the affirmative vote to express the desire of those present that eleven men be left out on a limb?

A. Correct.

Q. Was that exactly the way the question was put to the members?

A. That is the way I put it to them, not by Hatch.

Q. I want to see what was the way it was put to the meeting. In other words, what they were really deciding was that they were to go back to work, regardless of the fate of the eleven?

A. That is correct.

Q. They had no desire to see them out of work, or no desire one way or the other, as expressed by this ballot?

A. Evidently their desire was to go back to work.

Q. Regardless of what would happen to the eleven?

406 A. I pointed out to them that eleven men would be out of a job if they did go back to work.

Trial Examiner EICKHOFF. I understand.

The WITNESS. Well, the vote was completed, as I say, and they decided to go down and get their names on the pay roll right away.

By Mr. EDISES:

Q. Now, Mr. Loudermilk, was anything said about how these eleven men could get back to work, or anything said about their getting back to work?

A. During the meeting at the Bellevue Hotel, or right after the meeting, I should say, after the vote had been taken, I had quite a discussion with Mr. Jorgensen in the presence of several witnesses.

Q. Who were they?

A. Well, there was a Mr. Martinelli, Mr. Hatch was there, Mr. Palmer was present, and there were probably six or eight others; but those three witnesses, anyway. I asked Mr. Jorgensen what in the world they had eleven men on that list for.

"I can recognize the company's reluctance to re-employ the five at the head of the list, but I don't understand why you have these six others on there."

Q. Who were the five at the head of the list?

A. Myself, Mr. Palmer, Mr. Bash, Mr. Salisbury, and Mr. Rone.

I said, "I don't understand why you have these six other

407 men on this list. You say you had nothing to do with the preparation of this list, that it was given to you. Why are these men here?"

I said, "You know you are the only man who knows any reasons why these men should be discharged for their ability, or lack of ability."

I said, "You can't expect me to believe that someone in New York prepared this list for you, when they certainly are not—they certainly are not familiar with these six other men's duties, or whether they perform them properly or not. The only men that I can see on this list that New York knows anything about are the five at the head of the list, and why you have included the six others, I would like to know."

He said, "I did not prepare this list and I don't really know."

I said, "You can't expect me to believe that."

I said, "I would like to intercede for these men. After all, if you are going to discriminate against the five of us for union activities

there is no necessity for bringing in men who are not, in the light of absolute evidence, not guilty of union activities, other than being members of our association."

Q. What did he say to that?

A. He merely repeated the fact that he did not—that he had
408 not prepared the list, but he was sorry, there was nothing he could do about it.

Q. Did he say who prepared the list?

A. No; he didn't. Evidently he didn't know who prepared the list either.

Mr. LIVINGSTON. I move to strike starting from "evidently."

Trial Examiner EICKHOFF. Granted.

By Mr. EDISES:

Q. Do you remember Mr. Martinelli saying anything about whether these men were able operators? Do you remember any conversation or discussion along that line?

A. I remember Mr. Martinelli talking to Mr. Jorgensen, but what their conversation was about, I do not remember—I mean, after the meeting. I know that Mr. Martinelli was discussing the ability of some of the men, but I don't recall who they were or what they said.

Q. Do you remember anything else that was said at the meeting in regard to these eleven men? Did anybody accuse them of anything, of any particular offense, or undesirable status of any kind?

A. No; as I recall, I don't remember there being any reason given for their names being on the list, other than that they just happened to be on the list.

Q. Anything said about their being inefficient?

A. Not to me.

Examination by Trial Examiner EICKHOFF:

409 Q. Did either of these gentlemen who discussed the list with you have a written list, or did they just reel these names off from memory?

A. Well, the list—there was a list that was written. Mr. Jorgensen read the names from a list.

Q. From a written list?

A. Evidently; I didn't see the list.

Q. Oh, you didn't see it?

A. I say I saw he had the list in his hands, or he had a piece of paper.

Q. He appeared to read these names from the list which he held in his hand?

A. Yes.

By Mr. EDISES:

Q. Has the respondent that list? Is that available?

Mr. MERRICK. No; that is, the original piece of paper that he had in his hand at the meeting? That, I understand, is no longer in existence.

By Mr. Edises:

Q. Yes. Well, now, what happened, Mr. Loudermilk?

A. Well, after the men decided to go back and get their names on the pay roll, I decided to go back and get my sleep.

Q. Wait a minute—did they—what was said about going back and getting their names on the pay roll? Who did "they" refer to?

Mr. Merrick. Do you mind saying who he means when he
410 said, "Let's get the people."

By Mr. Edises:

Q. In the first place, you testified that Mr. Hatch was the one who said it?

A. Yes.

Q. Did that include you?

Mr. Livingston. That is objected to; pardon me.

Mr. Edises. Well, he referred to the meeting as relating to and involving all those present in the room; he was present in the room.

Mr. Merrick. You are asking him for a conclusion, not a quotation of what was said.

By Mr. Edises:

Q. Did you go down and try to put your name on the pay roll?

A. Well, after all——

Mr. Livingston. Yes or no.

Trial Examiner Eickhoff. Yes or no.

A. No.

Trial Examiner Eickhoff. If you want to explain why you didn't.

The Witness. Well, I had just been informed by the traffic chief that I was not going to be re-employed, so I didn't see any reason for trying to get my name on any other list.

Q. Were you accustomed to take orders from the traffic chief?
411 A. Oh, yes.

Q. You customarily did take orders from the traffic chief?

A. Absolutely.

Q. What did you do after this?

Mr. Livingston. He went to bed.

By Mr. Edises:

Q. Is that all?

A. Yes. I woke up in the morning refreshed, so I went down to the union headquarters about 10 a. m. and we sent a telegram to the Portland office, and other wires had been sent, which I saw, to the other locals, telling them what had transpired, advising the men to go back to work. It seems that there was a back-to-work movement on foot. [Laughter.]

Then we stayed at the union headquarters until around 2 o'clock in the afternoon, attending to different business, and so forth. We tried to straighten out things as much as we could. Anyone who came in, we advised them to go back to their jobs, and told them what had transpired, and so forth. In that afternoon, Mr. Palmer and myself, we went up to the office at 22 Battery street.

Q. You are speaking now of the afternoon of Tuesday, October 8th?

A. Yes; October 8th; correct. We went to the office there and attempted to see one of the officials of the company, and find
412 out if we couldn't possibly be reinstated. We were unable to see any of the officials at that time.

Q. Who did you ask to see?

A. Mr. Rodman.

Examination by Trial Examiner EICKHOFF:

Q. Tell us just what you did. How did you go about it?

Mr. LIVINGSTON. Would you mind including the time and day?

By Trial Examiner EICKHOFF:

Q. Yes; time, place, and circumstances.

A. Well, as I recall, this was between two and three p. m., on October 8th, Tuesday, that we went to the office of the Mackay Radio, and attempted to see Mr. Rodman and find out whether we could be reinstated.

Q. What constituted your attempt?

A. Well, we went there attempting to see him. We did not see him at that time.

Q. Did you apply at some office and talk to somebody and ask to see him? Just what did you do in that respect?

A. We attempted to see Mr. Rodman, ask him personally. We didn't see him. The girl told us he was out.

Q. You talked to his secretary?

A. Yes; we talked to his secretary, and she told us he was out; and evidently everyone else was out at that time of the day
413 because we didn't see anyone else. We went into their office to see if they were there, but they were not present. So we left, and we returned to the office around 5 o'clock in the afternoon of the same day. We went into Mr. Rodman's secretary's office and asked to see Mr. Rodman. She told us that Mr. Rodman was very busy, and didn't know whether we would be able to see him or not.

We waited in there for five, ten, or twenty minutes. And someone in there inadvertently left Mr. Rodman's door open, and we walked in. He had been busy with someone else. We walked in and saw Mr. Rodman, and asked him if we couldn't go back to work.

Mr. LIVINGSTON. This gentleman should sell life insurance; he could make more money.

The WITNESS. I sell silk socks. Do you want to buy some? [Laughter.]

And I personally said to Mr. Rodman—I'll have to stop here a second.

In the meantime I had found out naturally, in walking into the operating room, that some of the other men who were on this original list of eleven, were back at work. And so I walked into Mr. Rodman and said, "Seeing as how you have put back other men who were on the list, possibly we have a chance of going back to work."

He said, "No; you are on the permanently banned list."

Mr. MERRICK. What was that, Mr. Reporter?

414 (The answer referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. Proceed.

The WITNESS. I should like to correct that last statement. Mr. Rodman did not say, "You are on the permanently banned list." He said, "You are on the list from New York—that is, the orders from New York are that you are not to be re-employed."

He did not say that, "You are on the permanently banned list."

He said, "The only thing we can do in your case is to file your application for re-employment, and when an opening occurs we will put you back to work."

I said, "Who will pass on my application?" "That will be passed upon by Mr. Stone," he said.

I said, "Mr. Stone has already informed you that I am on the banned list." He is the one who prepared the list that I can't go back to work at this time. You don't expect me to believe that Mr. Stone will pass favorably on my application for re-employment?"

He said, "Well now, Loudermilk," he said, "why should he—after all you know you are the real leader—the ring leader of this organization. Why, you are the No. 1 public enemy as far as we are concerned, you are the head of the list! Why, you have a national reputation for causing us trouble!"

415 I said, "You are aware, Mr. Rodman, that I haven't even been active, interested in union activity since February, 1935, until this present strike."

"Well I don't know that."

I said, "You certainly do, you have a letter on file in your office, as well as Mr. Stone in his office, from the union headquarters themselves stating that I was no longer a member in good standing of the ARTA, and did not hold any office with them; and still you wish to tell me that I am the leader of this strike movement. You don't expect me to believe that you really believe that?"

That was all that was said along that line.

I said, "Why does a thing like this have to be done? Why do we have to be singled out for punishment, in other words?"

"Well," he said, "We can't have a thing like this. This union proposition is controlled by a bunch of agitators and reds; and you know it just simply has to be stopped. That is all there is to it. There is nothing else we can do."

I said, "What do you mean, a bunch of reds? I am not a red, an agitator, or that stuff. I am a labor man; I believe in the principles of fair play as well as anyone, but I don't know of any instance where we have used communistic ideas, or anything along that line of red enforcement of our principles or anything like that. Where do you get the information that we are a lot of reds, and radicals?"

416 He said, "Why, we have men who reported your meetings to us repeatedly for the past several months. We have had an agency, a detective agency, turning in reports on your leaders and

their activities. Why," he said, "I have a letter here in my possession" (he pulled a letter from his pocket, I don't know where he pulled it from) "Here is a letter which is proof that your men are communists."

I said, "If you know that, Mr. Rodman, you know a great deal more than I do. I don't know anything about these men being communists."

I said, "I have associated with them a good deal for the last period of years; I know nothing about them except that they were trying to establish themselves in a fair union."

Well, we had quite a bit of discussion with Mr. Rodman at that time, and whenever I asked him about going back to work (I even went so far as to tell him I wasn't interested in further union activities)—I said, "Will you please put me back to work; I'll be a good boy and I won't be a union leader any more? I need the money badly."

He said, "I am sorry."

He said, "There is nothing I can do," he said. "Your application will have to be passed on in the usual manner."

That terminated our discussion, our interview with Mr. Rodman.

Examination by Trial Examiner EICKHOFF:

417 Q. Were any of the other first five on the list under discussion in that same conversation?

A. In a general way; I don't remember any specific conversation.

Q. You just discussed yourself?

A. Yes; I was looking out for No. 1 then.

Trial Examiner EICKHOFF. We'll take a recess for five minutes; we'll adjourn for five minutes.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. Proceed.

Mr. EDISES. Where were we, Mr. Reporter?

(Thereupon a portion of the last answer was read as above recorded.)

By Mr. EDISES:

Q. Now, did you have any further conferences, interviews, or discussions with any company officials?

A. On that date?

Q. On that date, or any time subsequent to that date?

A. Well, when—well, we, Mr. Palmer and myself, went from Mr. Rodman's office on that same day directly into Mr. Dodd's office, and our reason for going in there was he had told us we would have to file applications for re-employment; so we went into Mr. Dodd's office to talk to him along the same lines we had talked to Mr. Rodman. Mr. Jorgensen came into the office during that time also, and remained there and we conversed for quite some time.

418 Q. What else was it you talked about? What was said and done?

A. About our reinstatement? We wanted to get our jobs back, and we felt that we had—that we had been treated shabbily by the men whose interests we had been acting in all along, and we were now banned from going back to work; and we expressed ourselves as being desirous of having our jobs back.

I said, "We would like to come back under any circumstances and conditions," and Mr. Jorgensen repeated then to me his statement that he had made before. He said, "You men are some of the finest men we have in the office in regard to ability, and I would particularly like to have you back myself, but there is really nothing I can do about it. I have been ordered that the matter must be taken care of in this way: You must file application for re-employment," so forth and so on.

The substance was that we would have to file application again, the same as we got from Mr. Rodman.

I said, "Let's have the applications and we will fill them out. Will you personally pass upon them what has to be done?"

He said, "I'll pass upon them myself and then pass them on to Mr. Dodd and see that they are forwarded to Mr. Stone for his approval."

I said, "I don't see how it will be possible for us to get the
419 approval of Mr. Stone inasmuch as you have told us, you have told us many times evidently Mr. Stone is the one who has placed us on the ban list. I don't see how we can get his approval to come back to work."

He said, "I'll do whatever is in my power to do. I'll approve your re-employment myself."

I said, "That is very nice of you," I said.

Q. Mr. Jorgensen, you are speaking about?

A. Mr. Jorgensen, yes. So we got the application blanks from Mr. Jorgensen and we filled them out. Not right there. I filled mine out that evening at home.

Examination by Trial Examiner EICKHOFF:

Q. Did Captain Dodd have anything to say about the matter? If so, what?

A. Captain Dodd had—what he had to say was, of course, along the same lines of what Mr. Jorgensen had said—that he personally would approve the application. He felt that we were good men, that the company could use us, that we were going to be good boys.

I believe he said—I don't recall—I do believe he said that he would personally recommend that we be re-employed.

Q. Mr. Rodman had not said that?

A. No.

Q. Did Captain Dodd say that the applications would have to be forwarded east?

A. I don't remember. I don't remember who said that, but
420 I know that I understood that the applications would have to be favorably passed upon by Mr. Stone personally before anything could be done regarding our reinstatement.

Q. Did you understand that from your conversations with Captain Dodd and Mr. Jorgensen?

A. Yes. So we filed application for re-employment. I brought mine back the following morning.

By Mr. EDISES:

Q. Do you remember what went on that application? Do you remember the wording?

A. It is the regular formal application of the Mackay Radio Company.

Mr. MERRICK. We will introduce it, if you wish.

Mr. EDISES. If you please, introduce those applications.

Mr. MERRICK. We produce them——

Trial Examiner EICKHOFF. Could it be stipulated that these men applied for re-employment in the usual way?

Mr. MERRICK. I'd be glad to produce the original application of these men, bring them into court tomorrow morning.

Trial Examiner EICKHOFF. Couldn't it be done by stipulation now?

Mr. MERRICK. I'd rather not do it by stipulation.

Trial Examiner EICKHOFF. Will you bring those in then?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. Will you also bring with you applications that you have from any or all of the five?

421 Mr. MERRICK. The other what, sir?

Trial Examiner EICKHOFF. There are five names in the complaint.

Mr. MERRICK. Yes; I'll bring them all.

Trial Examiner EICKHOFF. If you have applications from all of them, please bring them all.

Mr. EDISES. Will you also bring in any reports made to the company by detective agencies or agency employed by the company in connection with union meetings or union activities of the men?

Off the record.

(Discussion off the record.)

Trial Examiner EICKHOFF. Resume the hearing.

By Mr. EDISES:

Q. Was anything said to you by either Mr. Rodman or Mr. Dodd or Mr. Jorgensen in connection with the terms under which the men could be re-employed or taken back, other than that New York had to pass on the matter?

Trial Examiner EICKHOFF. You mean, anything in addition to what he has already testified?

Mr. EDISES. Yes, anything in addition.

A. No; that is all.

By Mr. EDISES:

Q. In your work at the H. B. office, did you handle any foreign circuits?

A. Quite often, yes.

Q. Which ones did you work on?

422 A. On the Japanese circuit, circuit to Shanghai, Honolulu, Manila, and four different circuits there.

Q. Did you work on any circuits with other cities or states in the United States?

A. I worked usually—my job was to work the circuit between San Francisco and New York, known as the New York circuit.

Q. What circuit were you working on at the time just prior to the strike?

A. On the New York circuit.

Q. Now, when you visited the H. B. office to see Mr. Rodman, you said that you noticed certain men on the list who were back at work. Which men did you notice, do you remember their names?

A. Yes; there was Mr. York——

Mr. MERRICK. (Interrupting.) We'll stipulate them, if you like.

By Mr. EDISES:

Q. Go ahead; let's hear what he has to say. Go ahead.

A. Mr. York, Mr. Humphries I noticed were back at work. Then I spoke to Mr. York and asked him what had been done, and he told me the others had been allowed to go back to work also.

Mr. EDISES. Will you stipulate that the other six on that list had been re-employed by the Mackay Radio?

423 Mr. MERRICK. Just a second. There was one, I believe, who had resigned. With the exception of one man who resigned.

Trial Examiner EICKHOFF. He was not re-employed? He gave his resignation?

Mr. MERRICK. I am not sure whether he was or not.

(Counsel Merrick consulting with employee of respondent.)

Mr. MERRICK. Yes; he resigned.

Mr. EDISES. May we have the dates and times that these men were re-employed?

Mr. MERRICK. You want it now through some document? I have no document—I can give you the times.

Mr. EDISES. (Interrupting.) Could you do that, please?

Trial Examiner EICKHOFF. You want that at this time, Mr. Edises?

Mr. EDISES. Not if it is causing delay.

Trial Examiner EICKHOFF. It is causing delay. I'd like to have a prompt adjournment.

Mr. EDISES. We are through with this witness.

Trial Examiner EICKHOFF. Well, you can only go ahead for ten minutes.

Mr. LIVINGSTON. There is nothing to be gained by going ahead with cross examination now.

Trial Examiner EICKHOFF. We ordinarily adjourn at four o'clock. We have been a little late all along today, but I thought I'd allow ten minutes more.

424 Mr. MERRICK. I don't think the cross examination will take more than half an hour, but I'd like to complete it at one time.

Trial Examiner EICKHOFF. Then we'll adjourn until ten in the morning.

(Therefore, at 4:00 o'clock p. m., the hearing in the above-entitled cause was adjourned until 10 o'clock a. m., Thursday, December 5, 1935.)

425 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Thursday, December 5, 1935.

Met pursuant to adjournment, at 10:00 o'clock a. m.

PROCEEDINGS

Trial Examiner EICKHOFF. Are you ready to proceed?

Mr. MERRICK. Ready.

Mr. EDISES. I would like to have permission to ask Mr. Loudermilk one or two additional questions.

Trial Examiner EICKHOFF. On direct?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. Will you resume the stand, Mr. Loudermilk?

426 ALONZO B. LOUDERMILK, the witness on the stand at the time of adjournment, resumed the stand and testified further, as follows:

Direct examination by Mr. EDISES:

Q. Mr. Loudermilk, while you were in New York, on that trip you took for the ARTA organizational purposes, did you meet a Mr. McDonough?

A. Yes.

Q. What do you know about Mr. McDonough's activities in connection with the organization of the Mackay men in New York?

A. Well, I knew that he was, at the time that I arrived in New York, a member of a committee known as the Central Committee of an organization which they termed the Commercial Employees' Association.

Q. What kind of an organization was that?

Mr. MERRICK. Get the date fixed, please.

The WITNESS. This was in October 1934.

By Mr. EDISES:

Q. Proceed.

A. And he was a member of this Central Committee, as they termed it. I had several conferences with Mr. McDonough.

Q. Did you learn what kind of an organization this Commercial Employees' Association was?

A. Yes. Well, what do you mean, did I learn?

Q. Did Mr. McDonough tell you anything about the nature
427 and purposes of the organization?

A. Well, merely that it was to be an association, that they

were going to attempt to organize the cable operators and the RCA and the Mackay men in an organization.

Q. Was ARTA in existence at that time?

A. Oh, yes.

Q. Did this organization have anything to do with ARTA?

A. It had a great deal to do with opposition towards the ARTA.

Q. It wasn't under the auspices of ARTA, was it?

A. No.

Q. Was it affiliated in any way with ARTA?

A. No affiliation whatsoever.

Q. Proceed now to tell us what you know about McDonough's activities.

Examination by Trial Examiner EICKHOFF:

Q. Just a minute! Who composed this organization?

A. Well, they had this Central Committee, which was composed of Mr. McDonough, J. French, and Mr. Funke.

Q. What was the makeup of the organization itself?

A. They had solicited membership in the Mackay Radio office at New York, and, I believe, they had secured—I don't know the exact number, but it seems they had some 20 or 25 members that were paying small dues per month into the treasury of
428 this association.

Q. And they also solicited operators in other companies?

A. That was their intention, according to what Mr. McDonough had said. However, they had not been successful in soliciting, securing any other operators from other companies to join their association. As a matter of fact——.

Mr. MERRICK. (Interrupting.) I will have to object to this on the ground that the witness is incompetent to testify to what this organization was.

Trial Examiner EICKHOFF. Objection overruled. You may cross examine the witness on his knowledge later.

Mr. MERRICK. As I say again, I do not like to have to cross examine on irrelevant and incompetent material, but if you insist on permitting it to go in on direct, we will have to do it on cross.

The WITNESS. Well, my knowledge, of course, of this CEA organization is gained from these men who were reputedly the head of it.

By Mr. EDISES:

Q. Who was the head of it, do you know?

Trial Examiner EICKHOFF. Who were these men?

Mr. LIVINGSTON. We object to any further questions on the CEA, on the ground that it is incompetent, irrelevant, and immaterial, and does not tend to prove any issue of the case.

Trial Examiner EICKHOFF. Objection overruled.

429 Mr. MERRICK. This objection stands to all this examination.

Trial Examiner EICKHOFF. That is understood, concerning this organization.

A. (Continuing.) Well, the——

Mr. LIVINGSTON. (Interrupting.) Would the Examiner permit me, not to interrogate the Examiner, to ask counsel whether he expects to connect the CEA with us or connect the activities of the CEA with any charges in this complaint, and, if so, how?

Trial Examiner EICKHOFF. You may ask him that, if he cares to answer.

Is it the purpose of your examination to connect this organization up with one of the parties in some way?

Mr. EDISES. Mr. McDonough was one of the men termed "scabs" and "strike breakers" who came out here from New York. When he came out here he was engaging in certain activities. Now, I want to later bring in evidence in regard to those activities, and I want to ask Mr. Loudermilk what he knows of Mr. McDonough's prior activities along the same line in New York.

Trial Examiner EICKHOFF. Will this be connected up with the respondent?

Mr. EDISES. Yes; decidedly.

Mr. LIVINGSTON. Can we be told how, so as to get along with
430 this as rapidly as possible, and so we will know what this case is about?

Trial Examiner EICKHOFF. There is no reason why counsel should outline all of the testimony in advance of it being given.

Mr. LIVINGSTON. If the understanding is that counsel promises to connect the 1934 activities of Mr. McDonough up with this company, if that is so, let's go ahead.

Mr. EDISES. I have the right to bring in the story.

Mr. MERRICK. You are being accorded the privilege, anyway.

By Mr. EDISES:

Q. Who was the head of this organization, Mr. Loudermilk?

A. Well, I know the man, I know his name, but I can not recall it now.

Q. Do you know what his position was?

A. He was the senior supervisor in the New York office, or one of the supervisors.

Q. New York office of who?

A. Mackay Radio, at the M. K. office. He was termed as the president of this CEA organization.

Examination by Trial Examiner EICKHOFF:

Q. Who were the other officers, if you know?

A. I don't remember the other officers, except this Central Committee; the three that I have mentioned previously here.

431 Q. This Central Committee was a committee of the CEA?

A. Correct.

Q. And who were the members of that, if you know?

A. Of the Central Committee?

Q. Yes.

A. Mr. McDonough, Mr. J. French, and Mr. Funke.

By Mr. EDISES:

Q. Did you have any meetings with this committee?

A. Yes; we had one meeting.

Q. What was said and done at that meeting?

A. Mr. McDonough and Mr. Funke and Mr. J. French were present at this meeting.

Q. Where was it held?

A. At Mr. McDonough's apartment in New York.

Q. Do you remember approximately when?

A. It was held in October of 1934.

Q. And what was said and done at that meeting?

A. We had some three or four hours' discussion. It was my purpose to attempt to bring these men into the ARTA and have them, in other words, drop their CEA connection, if possible, and come into the ARTA.

I met with absolutely no success, because they were absolutely opposed to joining the ARTA. They had many, many reasons why they didn't want to join ARTA, which they brought out.

432 Mr. McDonough stated to me several times during the evening that he had written me long letters telling me how the organization was progressing there in the east, and what they were doing. I finally said to Mr. McDonough, "Where did you mail these letters to?"

He said, "I mailed them to you at 22 Battery street, your office in San Francisco."

I said, "I never received any letters from you. I don't believe that you ever wrote any."

Then Mr. McDonough said, "Why, I have the carbon copy of these letters, and I will produce them."

I said, "Go ahead and produce them."

He left the room in which we were conversing and returned in about ten minutes with a pitcher of ice water.

Q. Mr. Loudermilk, the letters which he said he wrote to you, did they propose to be concerning the organization of ARTA?

A. No; of CEA. They were supposed to be letters that he had written to me telling me about their activities there. I told him, as I say, that I didn't think he had written the letters, and he failed to produce any evidence that he had written them.

We had some further discussion regarding——

Trial Examiner EICKHOFF. (Interrupting.) Were these letters of any importance?

433 The WITNESS. He merely wanted to show that he, Mr. McDonough, had been telling people that he was writing to me advising me of the activity of that organization in New York, where, as a matter of fact, he had never written me anything.

Mr. LIVINGSTON. Is that a fact to testify to in this case?

The WITNESS. I don't understand.

Mr. EDISES. I am willing to have it go out, to save argument.

Mr. LIVINGSTON. I don't understand the Examiner's rulings, and therefore I don't know what to say and object to. The Examiner has ruled that this may go in, and I don't know on what basis, and I am not going to ask the Examiner, because the Examiner doesn't want to be asked.

Trial Examiner EICKHOFF. I don't recall making such a ruling.

Mr. LIVINGSTON. We have objected to this entire line, and the Examiner has overruled it.

Trial Examiner EICKHOFF. I said that your objection would stand to the whole line.

Mr. MERRICK. You have admitted it.

Mr. LIVINGSTON. The objection, I take it, has been overruled, has it not?

434 Trial Examiner EICKHOFF. The objection to the specific question was overruled.

Mr. MERRICK. Do we have to object to every question after we have objected to the line of testimony?

Trial Examiner EICKHOFF. You can do one of two things: You may allow this testimony to go in, with the stipulation that it be deemed objected to, or you may renew your objection.

Mr. MERRICK. I understood that you had agreed that the objection went to all this testimony.

Mr. LIVINGSTON. That is correct.

Trial Examiner EICKHOFF. That is correct.

Mr. MERRICK. So that you are admitting all this testimony now in the record?

Trial Examiner EICKHOFF. I will admit it unless there is further objection which is sustained.

Mr. LIVINGSTON. We move to strike all the testimony about the CEA.

Trial Examiner EICKHOFF. Motion denied.

Mr. LIVINGSTON. We move to strike out all the testimony concerning the conversation with Mr. McDonough in his apartment in New York.

Trial Examiner EICKHOFF. Denied.

Mr. LIVINGSTON. We move to strike all of the conversation
435 with Mr. McDonough about certain purported letters that McDonough said he sent to the witness and the witness said he didn't send them.

Trial Examiner EICKHOFF. On what ground?

Mr. LIVINGSTON. On the ground that it is incompetent, irrelevant, and immaterial, and has nothing to do with the case, but is the wildest hearsay and tends to clutter up the record with nonsense, as far as this particular hearing is concerned.

Trial Examiner EICKHOFF. Denied.

Now, Mr. Edises, on your part let us see if we can not get somewhere as rapidly as possible and not go into any——.

Mr. EDISES. (Interrupting.) Very well.

Trial Examiner EICKHOFF. Proceed.

By Mr. EDISES:

Q. Do you know what position Mr. McDonough, or positions Mr. McDonough held with Mackay Radio?

Mr. LIVINGSTON. Objected to on the ground that he can't possibly know anything about that except by hearsay.

Trial Examiner EICKHOFF. Objection overruled.

A. I have a letter in my possession which gives an outline of the position of every man in the New York office.

By Mr. EDISES:

Q. Who wrote that letter? Where did you get it from?

A. One of the traffic control, I believe is the title he holds, Mr. Wingate, in New York, and which Mr. McDonough——

436 Mr. LIVINGSTON. (Interrupting.) We object to anything in the letter. If he has the letter in his possession let the letter be produced.

The WITNESS. I don't have it now.

Trial Examiner EICKHOFF. Can you produce it, the letter, later?

The WITNESS. Yes, sir.

Trial Examiner EICKHOFF. All right. Produce the letter later and pass on to something else now.

By Mr. EDISES:

Q. Did Mr. McDonough ever tell you what positions he held with Mackay Radio?

Mr. LIVINGSTON. That is objected to on the ground that Mackay——

Trial Examiner EICKHOFF. (Interrupting.) Overruled.

A. No; he did not.

Mr. LIVINGSTON. Withdraw the objection.

By Mr. EDISES:

Q. Did you have any other basis of information other than that letter you spoke of——

Mr. LIVINGSTON. (Interrupting.) That is objected to as calling for the witness' conclusion.

Trial Examiner EICKHOFF. I asked you to wait until he completes his question.

Mr. LIVINGSTON. I thought he was through.

By Mr. EDISES:

A. Did you have any other basis of information as to the position or positions Mr. McDonough held with Mackay Radio other than the letter that you referred to?

437 Mr. LIVINGSTON. Objected to as calling for the witness' conclusion as to what his basis of information was.

Trial Examiner EICKHOFF. Overruled.

A. I have no other direct information other than what may have been told to me by friends of mine in New York.

By Mr. EDISES:

Q. What was said about his position?

Mr. LIVINGSTON. Objected to on the ground that what friends say certainly can not prove any fact in this case.

Trial Examiner EICKHOFF. Objection sustained. The question is too vague.

By Mr. EDISES:

Q. Did you ever see Mr. McDonough in San Francisco?

A. No; I didn't.

Q. Mr. Loudermilk——

Mr. LIVINGSTON. (Interrupting.) Upon the basis of that last statement we move that all the testimony about what Mr. McDonough said or did, go out.

Trial Examiner EICKHOFF. Denied.

By Mr. EDISES:

Q. If this Board orders your reinstatement with Mackay Radio Company will you accept it and go back to work?

Mr. LIVINGSTON. That is objected to as speculative.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Do you want your job back with Mackay Radio?

438 A. Yes.

Q. Will you take it if it is offered to you?

A. Yes.

Examination by Trial Examiner EICKHOFF:

Q. Are you employed at the present time, Mr. Loudermilk?

A. I am a salesman on a commission basis; I don't know whether you term that employment or not.

Q. No fixed compensation?

A. No.

Q. What line?

A. Real Silk Hosiery Company.

By Mr. EDISES:

Q. *Have* much money have you made since you lost your job with Mackay?

Mr. LIVINGSTON. Objected to as incompetent, irrelevant and immaterial.

Trial Examiner EICKHOFF. Sustained.

Mr. EDISES. I think it is perfectly relevant. It is provided for in the Act that the Board is entitled to award back pay and I think that whatever earnings he had, might possibly be credited against that as more or less of a diminution of damages, or the award.

Trial Examiner EICKHOFF. May the Board award back pay?

Mr. EDISES. Yes.

Mr. LIVINGSTON. I would like to be referred to that,

439 because I would like to refer to that for the purpose of raising a constitutional question.

Mr. EDISES. Referring to Section 10 (c) of the Act, the pertinent part of which reads as follows:

"If, upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in, or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

Mr. LIVINGSTON. At this time—I will withdraw that statement. Mr. Merrick has a statement I think he wants to make on the constitutional question at this time.

Mr. MERRICK. I do not see the particular relevancy of inquiring from him, even on the basis that Mr. Edises has just mentioned, how much he earned up to date, because the Board can not award back pay, in the event it decides to do so, after the date of this hearing. That would have to be gone into later.

Trial Examiner EICKHOFF. I think the Board might want to offset his earnings during the period of unemployment, against back pay it might award.

440 Mr. MERRICK. I mean, when the award of the Board becomes effective, if there is any such award, they will want to know how much he has earned from the date of this hearing today up to the time of the award, so it wouldn't save very much to find out now.

Trial Examiner EICKHOFF. In other words, there might be an accounting at that time?

Mr. MERRICK. Yes. If there is going to be one, that is when it is going to take place.

Trial Examiner EICKHOFF. In view of this provision, have you a serious objection to the question of approximately what this witness has earned during the period of unemployment up to this date?

Mr. LIVINGSTON. May we say this: If the proffer is made by counsel for the Board upon the theory that the Board has the right under this Act to order a party to pay money to someone else, then in this event at this time we interpose an objection on the ground that any such provision violates the 14th and 5th amendments to the Constitution of the United States.

Trial Examiner EICKHOFF. You have already objected to the constitutionality.

Mr. LIVINGSTON. That is to the entire Act. We definitely will ask the Examiner's permission to protect our record on the con-

441 stitutional phases because very frequently, when you get up in the Supreme Court of the United States, they say, "You might have had a good constitutional point and did not make it clear enough to the court below." It is our job to make that clear. This is the first time that this particular section of the Act, which is unconstitutional for many reasons, in addition to the possible unconstitutionality of the entire Act, has come into the picture. That being so, I think it is our duty, and I request the Examiner to permit

us to make the point that this particular section, and this particular sentence of this particular section, which purports to permit an administrative body to order the payment of money in a proceeding of this kind, or arising out of a proceeding of this kind, is violative of the constitutional rights of the respondent, and particularly those rights guaranteed by the 14th and 5th amendments.

I will withdraw reference to the 14th amendment. It is the 5th amendment I had in mind.

Trial Examiner EICKHOFF. Your objection is noted.

Mr. EDISES. Will the witness be permitted to answer that question in regard to the amount of money he has earned?

Trial Examiner EICKHOFF. With regard to his earnings since he left Mackay Radio and up to date, yes.

By Mr. EDISES:

Q. How much money have you made since you left the employ of the Mackay Radio to date?

442 A. That is a matter of record, which can be produced in this court. I don't know the exact sum.

Q. Can you tell us at this time the approximate amount?

Mr. LIVINGSTON. That is objected to on the ground that this witness has answered the question.

Mr. MERRICK. He has shown his incompetency.

Trial Examiner EICKHOFF. The objection is sustained.

By Mr. EDISES:

Q. Will you produce the records that you have spoken of at the earliest possible time, Mr. Loudermilk?

A. I can produce them right now.

Q. You have them with you?

A. Yes, sir.

Mr. EDISES. Well, let us have them.

Trial Examiner EICKHOFF. First show them to Mr. Edises so he may show them to counsel for the other side.

The WITNESS. Here (indicating memoranda) is the voucher of the check, the profit-sharing check. This shows the full amount of commissions. And this (indicating) is the profit sharing on that check. That is the total for the month of, for the four weeks' period ending on—I have some more here; wait a minute—ending on the 18th of November.

This record (indicating sales book) is from that time forth. My earnings are listed in the left hand column there throughout (indicating).

443 Trial Examiner EICKHOFF. Do you want to use these memoranda from which to testify?

The WITNESS. I don't need them. I would like to have that back as soon as possible because that is my record.

Mr. EDISES. Off the record.

Trial Examiner EICKHOFF. I want to know what you are going to talk about before saying whether or not it is off the record.

Mr. EDISES. In regard to proving the amounts that he has made, my opinion is that these [indicating] ought to be memoranda from which he can testify.

Trial Examiner EICKHOFF. If the witness can give accurate testimony, using those memoranda, I will permit him to do so, provided counsel on the other side has no objection which I will sustain.

Mr. LIVINGSTON. Can we ask the witness a question on voir dire before we go into this particular thing?

Trial Examiner EICKHOFF. On what?

Mr. LIVINGSTON. Voir dire, which is an examination as to the document from which he proposes to testify.

Trial Examiner EICKHOFF. Yes.

Examination on voir dire by Mr. LIVINGSTON:

Q. What is this, may I ask? [Referring to memoranda produced by the witness.]

A. This is a record book of my earnings that I turned in.

444 Q. Record of sales that you made?

A. Yes. Every day they are all listed right there.

Q. It would be simple enough to make a compilation from that book?

A. Oh, yes.

Mr. LIVINGSTON. May I suggest that a compilation be made from this book? It would save time.

By Mr. MERRICK:

Q. These are individual items, aren't they?

A. Yes; the amounts in it.

Mr. MERRICK. Why don't you ask him a question: What has been the total amount of commissions earned by you during this period? Then leave the question blank for the present and we can fill it in afterwards, after he has had time to make the addition.

By Mr. EDISES:

Q. Can you tell us now what your total earnings have been?

Trial Examiner EICKHOFF. He said he couldn't.

A. I would have to add this up to find out.

Mr. EDISES. I suggest, then, that he be given an opportunity later to do that.

Mr. MERRICK. I suggest you ask the question now, and then you won't have to recall him.

Mr. LIVINGSTON. Subject to our objections to the entire line.

445 By Mr. EDISES:

Q. Mr. Loudermilk, on the basis of the memoranda that you have in your hand, which are designated, "Representative's daily report" and memoranda headed "No. 1," will you state what your total earnings have been from the period you left the employ of Mackay Radio to date?

Mr. MERRICK. Then don't answer. Leave it blank.

Mr. LIVINGSTON. May I ask, before the question is answered, and the answer will come in later, one or two questions?

Q. First, is this the only employment you have had, namely, with Real Silk?

A. That is right.

Q. When did you go into their employ?

A. Around about the 25th of October.

Q. There is another book besides this one?

A. No; that is the only book. The other is a stub of my profit-sharing check.

By Mr. EDISES:

Q. A memoranda headed "No. 1"?

A. Yes.

Mr. LIVINGSTON. I think that is clear.

The WITNESS. It shows the exact total of commissions and the profit sharing on it.

Trial Examiner EICKHOFF. Let the answer stand this way: A. My earnings were $245.99. (Filled in by reporter.)

Trial Examiner EICKHOFF. Then the blank can be filled
446 in later. Is that satisfactory?

Mr. MERRICK. Yes.

Mr. EDISES. That is all, Mr. Loudermilk.

I would like to ask, Mr. Merrick, if you have the time sheets for the period that I asked you for yesterday.

Mr. MERRICK. What was that?

Mr. EDISES. I believe it was the period—I asked you first for the time sheets during the period of Mr. McDonough's employment. And subsequently I asked you if you would be good enough to bring in the time sheets during the entire period of the strike, I believe; didn't I?

Mr. MERRICK. I don't believe you did.

Mr. EDISES. I mean in addition to the period of McDonough's employment, the several days prior.

Mr. MERRICK. I don't recollect of having heard that request before about the time sheets during the period of the strike. I don't think we have those.

Mr. EDISES. What time sheets have you?

(Counsel for respondent referring to records on counsel table.)

Mr. EDISES. May I also at this time request the reports of detective agencies that were asked for yesterday?

Mr. LIVINGSTON. Are you going to offer them in evidence?

Mr. EDISES. I would like to examine them first.

447 Mr. MERRICK. If you want to offer them in evidence, after you make your offer I will state whether or not I will produce them.

Mr. EDISES. The only reports that I would like, and which I would care to offer in evidence, were those which were rendered during the period of the strike, or immediately prior to the strike.

Mr. LIVINGSTON. We don't know what you call the strike period.

Mr. EDISES. October 4th to October 8th.

Mr. MERRICK. We have no such reports.

Mr. EDISES. If you haven't them, I don't want them.

You state, Mr. Merrick, that you have no record of any reports from any operative or detective agency in regard to the union activities of any of these five men, or the ARTA Local No. 3 prior to the period October 4, 1935, to October 8th?

Mr. MERRICK. You mean reports prepared prior to that date?

Mr. EDISES. Yes.

Mr. MERRICK. No.

Mr. EDISES. At this time I would like to request the production of any and all correspondence between Mr. Stone and any officers of the Mackay H. B. office in San Francisco, including Mr. Rodman, Captain Dodd, or Mr. Jorgensen, from the period September 23, 1935, to
448 and including October 9, 1935, relative to the strike of October 4th to October 8th, relative to the employment of strike breakers, or dealing with the employment or tenure of employment of any of the eleven men on the list testified to yesterday by Mr. Loudermilk, or pertaining to the negotiations for an agreement, which were engaged in during that period.

Mr. MERRICK. I hope you will write that out for me so I will have an accurate statement of what it is you wish.

Mr. EDISES. If the reporter will indicate the place where I asked for that I will subsequently confer with him and get a statement for you.

Mr. LIVINGSTON. Are you offering all of that correspondence in evidence?

Mr. EDISES. I am.

Mr. LIVINGSTON. Then we will let you know. It is offered in evidence and there will be no withdrawal after you inspect it, I take it.

Mr. EDISES. I am not saying——

Mr. LIVINGSTON. (Interrupting.) Then we won't produce it unless we know.

Mr. EDISES. If the evidence is relevant and pertains to matters that I have asked you about, I am perfectly willing to introduce it.

Mr. MERRICK. Are you seriously concerned about relevancy?

Mr. EDISES. I think I am as much concerned as you are.

449 Mr. LIVINGSTON. May I say to the Examiner, and to counsel through the Examiner, we do not think that counsel is the person appointed by law to determine what is relevant. He makes an offer of evidence. If he does, and we give him the documents pursuant to that offer, that is the end of it. We expect, in good faith, that the offer be maintained; otherwise we will compel him to go through many legal processes to get them.

If, in good faith, he said, "I offer this in evidence," and we give him an answer, on that account, "We will give you the documents," then we expect him to go through with the deal.

Mr. EDISES. Mr. Livingston, I am willing to leave the question of their relevancy to the Examiner. If he feels they are relevant, very well; if he doesn't, then——

Mr. LIVINGSTON. (Interrupting.) You can offer them in evidence as one exhibit, or as you please, as far as the mechanics are concerned.

Mr. EDISES. Are you willing to submit that to the trial examiner for determination of their relevancy?

Mr. LIVINGSTON. We will let you know about that.

Mr. EDISES. Very well. We will have the correspondence?

Mr. LIVINGSTON. I believe so.

Mr. EDISES. Your witness, Mr. Merrick.

Trial Examiner EICKHOFF. Before you begin your cross
450 examination I would be a little careful of what I called for on that, Mr. Edises, because it seems a little broad in some respects. If that question is re-read before we adjourn at the noon hour I would be able to tell you in advance some of the things I will admit.

Mr. EDISES. I would like to have you do that, Mr. Examiner. It is perfectly agreeable with me.

Trial Examiner EICKHOFF. It might be more convenient for all concerned.

Mr. EDISES. That is agreeable to me. Is that agreeable to you, Mr. Merrick?

Mr. MERRICK. What do you mean, is it agreeable to me?

Mr. EDISES. The Trial Examiner stated that he feels that it would be advisable to, by consultation, limit in advance the scope of my request for evidence and——

Mr. MERRICK. (Interrupting.) The Examiner, according to his statement, as I understood it, is trying to assist you in the presentation of your case by seeing to it that certain things weren't included there that you might not want. Now, as far as I am concerned, I am only interested in knowing what you finally do request. How you arrive at that is immaterial to me.

Mr. EDISES. All right.

Trial Examiner EICKHOFF. Any correspondence between the company officials that had no reference to or bearing upon
451 the labor dispute here naturally would not be admitted.

Mr. EDISES. I didn't ask for anything that didn't have a bearing upon these specific matters that I enumerated.

Trial Examiner EICKHOFF. Please pass on, then.

Cross examination by Mr. MERRICK:

Q. Mr. Loudermilk, where were you employed just prior to your coming to Mackay Radio?

A. I was employed in San Francisco by the Real Silk Hosiery Company.

Q. Approximately how much were you making at that time per month?

A. Between $150——

Mr. EDISES. I object to that question. I fail to see the relevancy of that.

Trial Examiner EICKHOFF. What is the relevancy of it?

Mr. LIVINGSTON. That is cross examination. We don't have to show relevancy when we want to go into a man's past history on cross examination.

Trial Examiner EICKHOFF. There are limits to the extent to which you can go into his past history.

Mr. LIVINGSTON. I doubt that.

Mr. MERRICK. There hasn't been any limit on direct so far.

Mr. LIVINGSTON. We can not go back to his infancy, but we
452 can go back to the period immediately prior to his coming with this company.

Trial Examiner EICKHOFF. I will allow the question and see what goes on.

A. I would say ranging from $150 to $175 a month.

By Mr. MERRICK:

Q. Just prior to that time you had been employed by RCA for a considerable period; is that correct?

A. Well, there was an intervening time there of about a year and a half when I was not employed by anyone.

Q. You had been previously employed by RCA for quite a while?

A. Yes; I had been.

Q. Do you remember what your salary was with the RCA when you left?

A. $185 per month.

Q. That was in what year?

A. In 1930.

Q. For what reason did you leave RCA?

A. I had been in the operating division for several years and requested a transfer, and I was transferred to the Photophone division and worked on installation of equipment here in the state of California for a period of some months. The business, the theatres became sold out. In other words, there was no more of this work to be done. Other men who held seniority over me, they requested that I transfer back to the operating division. I did not wish
453 to do this. I wanted to go along in sales work, or something similar, and I resigned.

Q. Then you were unemployed for a year after that?

A. No; I wasn't unemployed. I was working, trying to establish myself as a salesman.

Q. And your first salary with Mackay Radio was $159.50, you said?

A. My first salary was $149.50.

Q. And that increased gradually, within about two years, to $180?

A. No; that increased in two weeks to $159.50.

Q. When was it you first entered the employ of Mackay Radio?

A. December of 1933.

Q. Then, by July 1934, which was only six or seven months later, you were receiving $180 a month?

A. Correct.

Q. You were on various committees representing ARTA, weren't you, during the last year, and had occasion to negotiate, as a member of that committee, with officers of Mackay Radio?

A. I believe that I stated I was on one particular committee; not various committees.

Q. Well——

A. (Interrupting.) That committee was known as the Grievance Committee, or Relations Committee.

Q. And you attended meetings with the representatives of the company, did you not?

454 A. I did.

Q. Did you attend any meetings during the time that you were assigned to duty?

A. There may have been times when I was relieved from my duties at the request of the company to attend a meeting with some of the officials. However, that was not the general practice. I customarily attended meetings after my working hours.

Q. But you did attend some meetings during working hours, didn't you?

A. I probably have one or two; yes. You see, my working hours were from 6 a. m. until 2 in the afternoon, so I was usually off before anyone else.

Q. On those occasions when you did attend meetings, while you were assigned to duty, were you docked, your pay check decreased?

A. No.

Q. Do you know approximately the relative wage scales in San Francisco and in New York during the period of the last year and a half?

A. Yes; I am familiar with it through my contact with other operators in the same work.

Q. At the time that you were in New York, in October 1934, I think you said, were the operators in New York getting more or less than the operators in San Francisco?

455 A. They were receiving the same basis of pay that we were.

Q. Was the average pay more or less in New York than in San Francisco?

A. What do you mean by the average?

Q. I suppose, by the average, it would mean the total paid divided by the total number of employees.

A. That I can not answer; I don't know.

Q. If you don't know about it at that time, did you know about it at a later time?

A. Well, at a later date I understood that some increases were to be granted in New York, and I believe they stated, Mr. Stone stated, that the purpose of that was to bring the average up to the same as the San Francisco office's average. However, if you are asking me definitely, exactly, I do not.

Q. Do you know who prepared a certain article in a magazine called "ARTA" which, I understand, is the official publication of your union, in the August issue, entitled, "Some Statistics on the Mackay Radio and Telegraph Company"? Do you know who prepared that?

A. No; I don't.

Q. Do you know that it was prepared from data that you furnished?

A. No; I don't know that.

Q. Do you know who did furnish the data for it?

A. No.

456 Q. You don't know whether or not the statements in this article are correct?

A. I don't recall having read it.

Q. I exhibit it to you. You don't ever recall having read that?

A. [Examining magazine article referred to.] Oh, yes; I recall having seem this; I recall having seen it now; yes.

Q. The statement appears in this article:

"The average monthly wage for the operating staff of H. B. is $3.61 per month higher than the average wage of"—Wait a minute! That is not the right reference. Here it is:

"The difference between the average monthly salaries paid to the men at the above two offices shows that H. B. staff receives $7.16 more per month per man than the M. K. staff." Do you know whether or not that statement is true?

A. I do not.

Q. But at least you know that the people in San Francisco were not paid less than those in New York?

A. Yes; I do know that.

Q. According to the testimony that has been put in by yourself and Mr. Rone, the center of union activity was really here in San Francisco, wasn't it? You people undertook the organization of the union in other parts of the country, particularly in New York your-

457 self, didn't you? Did you go there for that purpose in October 1934?

A. I did, but you are speaking about 1934 now?

Q. Yes.

A. And about 1934 I can answer with authority, because I am familiar with that; but you are asking me—are you generalizing in your statement as to whether San Francisco was the center of union activities as of 1935 or 1934, which?

Q. I am going to take them separately first. First, in 1934 weren't they centered here?

A. In 1934 I would say that San Francisco was the center of the union activities.

Q. And in 1935 wasn't the San Francisco people at least conducting the union activities?

A. In 1935 I can not authoritatively answer, because I was not directly connected with any action of the union during that time.

Q. Do you have any explanation for the fact that San Francisco people, receiving the same pay, were more disturbed about working conditions than those in New York on the same pay?

Mr. EDISES. I object to that question, Mr. Examiner. I think that it is entirely too speculative.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

Q. Was there any reason, aside from the feeling on the part
458 of the men here, including yourself, that they were not receiving adequate compensation and had certain other complaints in regard to the way the company conducted its business, for your joining a union and undertaking its activities?

A. That is rather a long—I would like to have that read again, please.

(The question referred to was read aloud by the reporter as above recorded.)

A. Yes. My prime motive in attempting to, or in assisting in formulating a union, or in joining it myself, was because I believed that the radio men, especially those men who have served a long term of apprenticeship in the business, are skilled, highly skilled type of labor, and they should be protected by some union organization.

Q. Is there any direct affiliation between your union and the longshoremen's union?

Mr. EDISES. I object to that question, Mr. Examiner. I fail to see the relevancy of it.

Trial Examiner EICKHOFF. What have you in mind, Mr. Merrick, or don't you care to say?

Mr. MERRICK. I didn't hear the last.

Trial Examiner EICKHOFF. I don't quite see where the longshoremen's union comes in here, or has come in the case.

Mr. MERRICK. I will ask some other questions.

By Mr. MERRICK:

459 Q. Who is the secretary of your union here in San Francisco?

A. Do you refer to the point to point, or the marine section?

Q. What is the office held by Mr. Mervyn Rathborne?

A. Mr. Rathborne is the secretary of the San Francisco marine local.

Q. Is he connected in any way with the longshoremen's union?

A. I do not know.

Q. You don't know? You never heard him say, or anyone else say?

A. I have not.

Mr. EDISES. Mr. Examiner, I would like to know if there is any connection, just exactly what the object of this testimony is. I don't see that it is material.

Trial Examiner EICKHOFF. I will give them some leeway and see if it gets anywhere.

By Mr. MERRICK:

Q. I would like to call to your attention an article published in the October number of the official organ of the American Radio Telegraphists' Association.

A. What year?

Q. 1935. On page 4 there is this sentence:

"Much of the ARTA's power on the west coast is directly incumbent upon its close relationship with that powerful maritime group—the Maritime Federation of the Pacific."

Have you ever read that statement before?

460 A. I don't remember whether I have read it or not.

Q. Are you a regular reader of this official publication?

A. I am.

Q. Very likely then, that you read it?

A. It is probable I did; yes.

Q. Do you know what that close relationship is with that powerful maritime group?

A. I don't know what the close relationship is, other than what I may have heard at one time or another through other members, but my direct knowledge of what those close connections are, is nil.

Q. What have you heard from other members at one time and another?

Trial Examiner EICKHOFF. Are you referring to close relations as an established fact or what that article says about a close relation?

Mr. MERRICK. This is an official publication of the complainant in this case.

Trial Examiner EICKHOFF. You are referring to that publication as though some fact had been established or proved.

Mr. MERRICK. This is an admission, isn't it?

Trial Examiner EICKHOFF. By whom?

Mr. MERRICK. By ARTA in their own official publication. They are a party to this proceeding.

Trial Examiner EICKHOFF. I don't know that, nor do you.

461 Mr. MERRICK. I don't know what you mean by that.

Trial Examiner EICKHOFF. I don't even know who put out the publication, or who edited it, or the scope of its authority.

Mr. EDISES. Or who made the statement, or who wrote it.

Mr. LIVINGSTON. It makes no difference who wrote it, they are responsible for it, and we will prove it is their publication unless you stipulate to it.

By Mr. MERRICK:

Q. I show you the October 1935 issue of "ARTA," subtitle, "Official Organ of the American Radio Telegraphists' Association, Vol. 2, No. 7." Can you identify that as the official publication of ARTA?

Mr. EDISES. May I look at that before he testifies?

Mr. MERRICK. Haven't you seen it before?

Mr. EDISES. I may have.

Mr. MERRICK. Do you deny this is their official publication?

Mr. EDISES. I am not denying anything.

Mr. LIVINGSTON. Will you stipulate that it is?

Mr. MERRICK. It is nothing to get excited about.

(Counsel Edises examined the publication referred to.)

Mr. LIVINGSTON. The question now is, if counsel will stipulate that that is the official publication of the complainants.

Mr. EDISES. I am not going to stipulate to it.

462 Mr. MERRICK. Will you state on the record that you refuse to stipulate?

Mr. LIVINGSTON. Can I get a "Yes" or "No" to that question?

Trial Examiner EICKHOFF. Wait a minute.

Mr. EDISES. If you want to prove anything about the magazine, go ahead. I have no objection to that.

Mr. MERRICK. I would like to say a few things off the record. If we are going to conduct this case on that basis, then there is no reason why we should continue to give you and extend you the courtesies that we have so far. If counsel for the Board will not admit this, which no one can possibly deny, is the official publication of the union, then I think that all courtesies between counsel are off.

Mr. EDISES. I have never asked specifically of any member of ARTA whether or not that was the official publication. My assumption certainly would not be the basis for a stipulation of that kind, Mr. Merrick.

Mr. MERRICK. If you don't know, then you are a great deal more ignorant about your case than I had assumed you were.

Mr. EDISES. Now——

Trial Examiner EICKHOFF. (Interrupting.) Kindly make no further remarks of that character.

Mr. MERRICK. I think it was quite in order.

Trial Examiner EICKHOFF. We will take a recess for ten

463 minutes.

(At this point a recess was taken after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. Are you ready, Mr. Edises?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. You may resume.

Mr. MERRICK. I again ask counsel for the complainant whether or not he will stipulate that the document I hold in my hand, which has already been described in the record, is the official publication of ARTA, the complainant in this proceeding.

Mr. EDISES. I am informed that the magazine that you have, Mr. Merrick, is published by the National ARTA. It is not published by Local No. 3, and whatever statements may appear in there have not been authorized by Local No. 3, and, moreover, the members of this local are not bound by any statements in there.

Mr. MERRICK. That is argument.

Trial Examiner EICKHOFF. It is the same sort of argument you made with respect to testimony in a number of instances.

Mr. MERRICK. I think it was noted by both the Examiner and by counsel for the Board that it was argument. I don't know whether this——

Trial Examiner EICKHOFF. (Interrupting.) Do you call for

464 the same stipulation, or do you now call for another stipulation? In other words, do you want——

Mr. MERRICK. (Interrupting.) I didn't tie it up in the stipulation with the local. I simply said that it is an official publication of the complainant in this proceeding. Is there any doubt about that?

Trial Examiner EICKHOFF. Are you willing to stipulate that it is the publication of the National ARTA?

Mr. EDISES. Yes; I am willing to stipulate that is the publication of the National ARTA, but I can not stipulate that it is the official publication of Local No. 3.

Mr. MERRICK. No one asked you to.

Trial Examiner EICKHOFF. It is so stipulated, then, that this magazine is the publication of the National Labor organization?

Mr. MERRICK. Now will counsel for the Board also stipulate that Local No. 3, of which this witness and the previous witness are or have been members, is a component part of ARTA, the national association, which publishes this magazine?

Mr. EDISES. I have no objection to a stipulation along those lines, but I think that the phrase "component part" might be particularly raised.

Mr. MERRICK. Have you a suggestion as to how that could be better phrased?

Trial Examiner EICKHOFF. I think we are now quibbling
465 on words. This is a local of the main union, isn't it?

Mr. EDISES. Yes; a local.

Trial Examiner EICKHOFF. And as such, a chapter?

Mr. EDISES. I am willing to stipulate this is a chapter or a local, but it is a local which has autonomy in its own affairs.

Mr. MERRICK. But it is subject to the jurisdiction of the National officers, is it not?

Mr. EDISES. I don't believe it is subject to the jurisdiction if, by that you mean it has to take orders from the National Association, Mr. Merrick.

Mr. MERRICK. It doesn't? You would say it doesn't have to take any orders from the national officers?

Mr. EDISES. Every action of the local here depends on a vote of its own members.

Mr. MERRICK. Then I ask you, as counsel for the Board, to produce the constitution and by-laws of the national organization, and the constitution and by-laws of the San Francisco Local No. 3.

Mr. EDISES. I will be very glad to do that, Mr. Merrick.

Mr. MERRICK. Will the stipulation run not only to this particular number of "ARTA", but to any other numbers that I may care to refer to, which I will show you, and I can identify them?

466 Mr. EDISES. Yes. Over what period of time do you have reference to, Mr. Merrick?

Mr. MERRICK. Whatever they are—they are all the regular numbered issues of this magazine. I think they are all between July and November of this year, as a matter of fact.

Mr. EDISES. I am willing to stipulate to that as applying to the numbers that you just mentioned, between July and November of this year.

Mr. MERRICK. All right.

By Mr. MERRICK:

Q. Now, Mr. Loudermilk, my recollection of what you said about this quotation I read is rather dim. I think that you said you didn't know what the connection was between ARTA and the Maritime Federation of the Pacific.

A. That is what I said.

Q. Do you know whether or not ARTA is a member of that federation?

A. I believe the maritime body here in San Francisco is a member of the Maritime Federation.

Q. You are familiar with the official stationery of your association, are you not?

A. To some extent.

Q. I show you this slip of paper [indicating letterhead] headed "American Radio Telegraphists' Association, Representing all Radio Operators, Member Maritime Federation of the Pacific
467 Coast," and on the side it says: "National Officers: Dr. Lee de Forest, Honorary President; Hoyt S. Haddock, President; Roy A. Pyle, Vice-president; Mervyn Rathborne, Secretary." Is that the official stationery used by your union?

A. [Examining letterhead referred to.] Well, I have never seen this exact letterhead before.

Q. The signature on this particular letter is "O. M. Salisbury." Do you know him?

A. Yes.

Q. Is he a member of your organization?

A. Yes.

Q. Is that his signature?

A. That is the way he spells it.

Q. I asked, is that his signature?

A. How am I to know that?

Q. Does it look like his signature?

Mr. EDISES. I object. That is not the best evidence as to whether it is his signature. It is this man's opinion.

Mr. LIVINGSTON. Will you stipulate that it is his signature?

Trial Examiner EICKHOFF. Would you mind resuming your seat, Mr. Livingston? I do not like so many counsel up here near the witness.

Mr. LIVINGSTON. I am sorry you had to pick on me.

Trial Examiner EICKHOFF. Whoever is conducting the
468 cross examination.

Mr. LIVINGSTON. I will ask the counsel if he will stipulate that that is Mr. Salisbury's signature.

Mr. EDISES. I don't know. I am willing to ask Mr. Salisbury. He is in the courtroom.

Mr. LIVINGSTON. Find out.

By Mr. MERRICK:

Q. Have you ever seen Mr. Salisbury's signature?

A. Yes.

(Counsel Edises consulting with Mr. Salisbury.)

Mr. EDISES. Yes; that is Mr. Salisbury's signature.

Mr. LIVINGSTON. All right; let's go on.

By Mr. MERRICK:

Q. And you have reason, then, to believe that is a correct statement on this letterhead, that the ARTA is a member of the Maritime Federation, if it appears on the official stationery of your union?

A. Well, I have reason to believe that the marine organization is a member of the Maritime Federation.

Q. It doesn't separate it there, does it?

A. Not there; it don't.

Q. You think that the point to point division of the union is not a member of the Maritime Federation, but the marine division of the ARTA is a member of the Federation?

A. I not only think it, I know it.

Q. Has the marine division autonomy?

469 A. They have.

Q. And they can join something else, even though the other part of the same local doesn't belong?

A. Exactly; correct.

Q. Is it also true that the San Francisco local could join some other organization, even though the National organization did not belong to it?

A. What other organization do you mean?

Q. An organization like the Maritime Federation?

A. That is an affiliation.

Q. It says "Member" here.

A. Member or affiliate of the Maritime Federation.

Q. And it is your testimony here under oath that the marine division of the San Francisco Local No. 3 is a member of the Maritime Federation?

A. To the best of my knowledge.

Q. And that you believe neither the San Francisco local as a whole, or the national organization, ARTA, is a member of the Maritime Federation?

A. I believe that the national organization is not a member of the Maritime Federation, and I further believe that the point to point division of the ARTA has no membership with the Maritime Federation.

Q. Are you acquainted with Roy A. Pyle?

A. I am.

470 Q. What office does he hold in your organization?

A. I believe he is a vice-president.

Q. Vice-president of the national association or of the local?

A. Of the National association.

Mr. EDISES. Mr. Reporter, will you read the last question and answer?

(The last question and answer were read aloud by the reporter as above recorded.)

By Mr. MERRICK:

Q. Do you know whether or not Mr. Roy A. Pyle is a registered communist?

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. Objection sustained.

Mr. EDISES. I object to any similar questions along that line which have no particular relevancy or bearing on the matter in hand.

Mr. MERRICK. They have considerable relevancy and bearing.

I am willing to state here, and give the Examiner the opportunity to change his ruling if he desires, as to what their relevancy is.

I am going to ask a series of questions along this line.

Mr. EDISES. I object to any further questions along that line, and, in particular, I object to questions of a general nature of that
471 type concerning which it is perfectly obvious the witness has no knowledge of his own.

Mr. LIVINGSTON. That is the newest theory that has entered this case, if the Examiner please.

Mr. MERRICK. Did you on your direct refrain from examining him on similar lines of testimony?

Trial Examiner EICKHOFF. Let's proceed.

Mr. MERRICK. In connection with this offer, this question, I want to state the purpose of the question.

Trial Examiner EICKHOFF. All right.

Mr. MERRICK. I want to offer evidence, through this witness, that there is some reason for believing that the strike that was called was not called for the purpose of benefitting the employees of Mackay Radio, but was called as part of a concerted program that was largely dominated by what is known as the communist element here on the Pacific Coast.

Trial Examiner EICKHOFF. If you want to make the witness your own later, you may.

Mr. MERRICK. He has discussed communism on his direct testimony. He had quite a little to say about it. I submit this is fair cross examination.

Trial Examiner EICKHOFF. Only in connection with what Mr. Rodman had mentioned to him in a conversation, I think.

Mr. MERRICK. Well, he also made several remarks himself in his conversation with Mr. Rodman that he has testified to on the
472 stand, about the connection of this union with communism. I submit that I am entitled to question him along the same lines.

Trial Examiner EICKHOFF. Put your next question.

Mr. MERRICK. I asked whether he knew that Mr. Roy A. Pyle was a registered communist.

Mr. EDISES. I object.

Trial Examiner EICKHOFF. The objection to that question was sustained.

By Mr. MERRICK:

Q. Did Mr. Pyle tell you he was a communist?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Same ruling.

By Mr. MERRICK:

Q. Have you ever seen Mr. Pyle associating with people that, to your knowledge, were communists?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Same ruling.

By Mr. MERRICK:

Q. Do you know whether or not Mr. Pyle is a close friend of Harry Bridges?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Same ruling.

By Mr. MERRICK:

Q. Do you know whether or not Mr. Rathborne is a close associate of Harry Bridges?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Same ruling.

By Mr. MERRICK:

473 Q. Do you know what office, if any, Mr. Rathborne holds in the longshoremen's union, with which Mr. Bridges is connected?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Just a moment! The question is objectionable inasmuch as it assumes something not in evidence, and for that reason I will not allow it.

Mr. MERRICK. Is it permissible to ask what you are referring to?

Trial Examiner EICKHOFF. Yes—"with which Mr. Harry Bridges is connected," something of that sort.

By Mr. MERRICK:

Q. Are you acquainted with Mr. Harry Bridges?

Mr. EDISES. Object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. What is the purpose of the question?

Mr. MERRICK. Connecting it up with the previous question you said was objectionable.

Trial Examiner EICKHOFF. I will allow it.

Mr. EDISES. I object.

Trial Examiner EICKHOFF. I have allowed it.

A. My answer is, I do not know Mr. Harry Bridges; no.

By Mr. MERRICK:

Q. Never met him?

A. Never had the pleasure of meeting him.

Q. Do you know what position he holds with the Maritime Federation?

474 Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

Q. Do you know whether or not Mr. Bridges is——

Mr. LIVINGSTON. (Interrupting.) No, no!

Mr. EDISES. Mr. Examiner, at this time I want to make a general objection to the introduction of this line of testimony. I seriously question, in the first place, its relevancy and materiality; and, in the second place, I believe that counsel are simply cluttering the record with a lot of stuff that is intended to be prejudicial to these complainants, and it has no particular bearing on what we are trying to get at in this hearing.

Mr. MERRICK. I doubt your sincerity, and I state that on the record.

Mr. EDISES. Thank you very kindly.

Trial Examiner EICKHOFF. If we can not be more orderly, why we will just have to take a recess. I think these interchanges between counsel, which have nothing to do with the point involved in the case, should be omitted.

Now, we can not very well try this case under general objections, and continuing objections from both sides. I prefer to have the objections to the questions as they arise. I think that we do lose time by saying, "I object to this whole line of testimony," because

475 it is impossible for me to rule intelligently in that matter.

Mr. EDISES. If Mr. Merrick has some specific matter that he wants to bring out——

Trial Examiner EICKHOFF. (Interrupting.) Let's wait and see what he wants to get at and we will see.

By Mr. MERRICK:

Q. Do you know whether or not Mr. Rathborne is an officer of the Maritime Federation?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Objection overruled.

A. I do not.

By Mr. MERRICK:

Q. You haven't any information at all about that? Never have heard anybody discuss it, or saying what position he held with them?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Overruled.

A. That is exactly correct.

By Mr. MERRICK:

Q. Is it not a fact that the Maritime Federation of the Pacific Coast frequently, or at least does hold meetings in your hall, your union hall?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Do you know whether or not Mr. Bridges is frequently around your hall?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Sustained.

476 By Mr. MERRICK:

Q. Have you ever known of Mr. Bridges being at your union hall?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. To assist the Examiner in connection with his rulings, for the purpose of the record, I want to state that I am prepared to show, as I think it is a well known fact, that Mr. Harry Bridges is a registered communist connected with the activities of this organization on the Pacific Coast; that Mr. Roy A. Pyle, vice-president of the American Radio Telegraphists' Association, is also a registered communist, that he and Mr. Rathborne are understood to be very close associates of Mr. Bridges.

Mr. EDISES. I object to it. Mr. Examiner, I wish to move to strike the last statement from the record on the ground that even if he could prove it, it has nothing to do with the matters we are concerned with in this case, the question of discriminatory discharge of these men, and the question of setting up a company-dominated union.

Trial Examiner EICKHOFF. When we come to that proof we will take care of it at that time.

Mr. LIVINGSTON. In the light of that offer of proof, to which these last questions——

Trial Examiner EICKHOFF. I hardly think this is the proper
477 time to offer proof. You are cross examining a witness.

Mr. LIVINGSTON. May it be understood that we may reoffer this entire line at a later time without being deemed to offend against the Examiner's ruling?

Trial Examiner EICKHOFF. Yes.

By Mr. MERRICK:

Q. In connection with your activities in Chicago, November 1934, did you consult counsel in Chicago in connection with the complaint which you made as to violation of the NRA, the complaint rather, that you suggested that the men make?

A. I consulted with the NRA administrator there.

Q. Did you consult an attorney?

A. The NRA administrator may be an attorney, but I don't know whether he is or not.

Q. You consulted with no one that you know was an attorney?

A. I say I consulted with the NRA administrator.

Q. I asked you, did you consult with anyone whom you knew was an attorney?

A. No.

Q. You testified in considerable detail as to what took place at a certain meeting at the Bellevue Hotel on the morning of October 8th, I think it was; is that right?

A. That is correct.

Q. Isn't it a fact, Mr. Loudermilk, that Mr. Jorgensen, at that time, read a list of eleven men and stated that all the
478 other employees of the company would be taken back without any strings attached whatsoever, and that these eleven men could come back, but their applications for re-employment would have to be sent to Mr. Stone and their final status would depend upon what he had to say in regard to their applications?

The WITNESS. Read that question back.

(The question referred to was read aloud by the reporter as above recorded.)

A. In asking me to testify to the exact terms Mr. Jorgensen used, I may naturally vary somewhat from what he actually said.

Q. All I mean, isn't that the substance of what he said? Neither you, or he, or anyone else can remember the exact words.

A. The substance of what he said was that the eleven men will not be allowed to return to work.

Q. You are very sure he said definitely they wouldn't be allowed to return to work?

A. I am very sure that he said that, and whether he said that they would later be allowed to refile applications for employment, which would have to be passed upon by Mr. Stone. I do not remember whether he stated that at the time he read the list or at a later date.

Q. But he did state that?

479 A. During that meeting?

Q. Yes.

A. I don't know.

Q. You didn't hear him say it?

A. I don't remember having heard him say it.

Q. Will you be willing to state under oath he did not say it?

A. I would be willing to state, as I have said, I do not remember having heard him say it.

Q. It is possible that you may have heard that, according to your recollection?

A. I don't know how to answer that question, Mr. Examiner.

Trial Examiner EICKHOFF. He said he doesn't know how to answer that question. I think it necessarily follows, from what the witness has said, that is possible.

By Mr. MERRICK:

Q. Are you willing to state definitely that Mr. Jorgensen did not make any such statement as I have suggested?

A. No. I would like to be as fair as I possibly can. I don't want to say that he did not, or that he did. I say I don't remember it.

Q. And it may be that, in certain particulars, on your direct testimony you didn't quote him exactly?

A. I quoted him as exactly as I can remember.

Q. But you didn't take it down in shorthand, or make notes
480 as to what he said at the time, did you?

A. No; I did not.

Q. So that it is possible that you didn't quote him exactly?

Trial Examiner EICKHOFF. I think that has been asked and answered, counsel.

By Mr. MERRICK:

Q. Are you willing to state under oath that Mr. Jorgensen said definitely that the eleven men could not return to work at that time, whose names he read on this list?

A. As I remember, and from my previous testimony——

Q. (Interrupting.) Don't try to refresh your recollection from your previous testimony. Try to remember directly from what occurred at the meeting.

A. The refreshment, I imagine, would have to come from reading the testimony. I am not asking for that. But I remember saying that Mr. McLaughlin made an address and he stated that these men would not be allowed to go back to work, and "Now, Mr. Jorgensen will read you the list of the names."

Q. Then you do not recollect Mr. Jorgensen saying definitely that these eleven men would not be allowed to return to work?

A. I remember definitely Mr. Jorgensen saying to me personally several times that there were a number of men that were not going to be allowed to go back to work.

481 Q. I am asking about what he said in regard to the eleven. Do you remember that Mr. Jorgensen said anything definitely in regard to the eleven?

A. [Pause.]

Trial Examiner EICKHOFF. This is at the meeting at the Bellevue?

Mr. MERRICK. At the meting at the Bellevue Hotel.

A. I remember Mr. Jorgensen reading the list of names and I knew thoroughly definitely, I understood perfectly that these men were not to be allowed to return to work.

Now, I understand, Mr. Merrick, that you are attempting to have me state definitely whether Mr. Jorgensen made that statement or not, and I am trying to be perfectly fair. I will say that I don't remember whether he did or did not make that statement. However, the understanding was perfectly clear to everyone present.

By Mr. MERRICK:

Q. Where else did you get your understanding from than from Mr. Jorgensen's statement?

A. As to my own self, Mr. Jorgensen told me in private and in conference with him that I, personally, was on the list and would not be allowed to return to work with the rest of the men. That I can definitely swear to.

Q. Did you ask him if you would be put to work if you came back with the rest of the men?

A. Did I ask him?

482 Q. Yes.

A. I don't believe I did.

Q. That conversation with Mr. Jorgensen, was that before the meeting or after the meeting?

A. Before the meeting.

Q. You discussed this list with him at that time?

A. I asked him if there was a list of names, and he said "Yes."

Q. Were did you first hear about the list?

A. I first heard about the list from Mr. Jorgensen.

Q. Well, then, you asked him who was on the list?

A. Yes.

Q. Did he give you all the names on it?

A. No.

Q. What else did you ask him about the list?

A. I asked him if I was on the list.

Q. He said you were?

A. He said I was.

Q. Did he then tell you what the significance of this list was?

A. Certainly.

Q. What did he say?

A. You mean, did I understand what the significance of the list was?

Q. No; did he tell you?

483 A. He told me the significance of the list before he told me that I was on it.

Q. What did he tell you was the significance of the list?

A. He told me there were certain men that were not going to be allowed the privilege of returning to work.

Q. At that time or at any time?

A. I don't remember whether he made it as specific.

Q. You said he said they weren't allowed the privilege of returning to work?

A. He stated that these men he had on this list were not going to be allowed to go back to work.

Q. He didn't qualify it by saying, "At the present time" or "at any other time," or "except subject to some conditions"?

A. Not that I remember.

Q. Just that blanket statement?

A. (No answer.)

Q. Isn't it a fact he told you at that time that these eleven men could not return to work until they had filed applications?

A. At which time? Are you now referring to the meeting or before the meeting?

Q. The conversation before the meeting.

A. From our conversation before the meeting——

Q. (Interrupting.) Can you just answer that question? You can have it read if you wish.

484 Trial Examiner EICKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. Answer "Yes" or "No," and if you want to explain your answer, you may.

A. I don't remember.

By Mr. MERRICK:

Q. You don't remember anything being said about filing applications?

A. You have asked me to answer "Yes" or "No." I said I don't remember.

Q. Then I am asking another question. You don't remember his having said anything about filing applications for reemployment?

A. I remember at some time during that conversation in the hotel——

Q. (Interrupting.) How about this conversation with you before?

A. Whether it was the conversation before the meeting or after the meeting, or when, I don't remember; but I remember his stating to me that we could file applications for remployment and they would be acted upon by Mr. Stone. If he thought that they were favorable, naturally, why——

Mr. LIVINGSTON. (Interrupting.) We object to any voluntary testimony about "naturally," and so on.

485 By Mr. MERRICK:

Q. How many supervisors were employed at the H. B. office just before the strike, do you know?

A. How many were employed?

Q. Yes.

A. Oh, I don't know; I should say there were six or seven, or seven or eight. I don't know the exact number.

Q. That is quite sufficient. And you said that four of them, I believe, were present at this meeting at the Bellevue Hotel?

A. Yes.

Q. And that they were McKercher, Layman, Buckley, McLaughlin; is that right?

A. That is right.

Q. Were they members of ARTA?

A. McKercher had been a member of ARTA from its original inception here; McLaughlin had joined the union at its origination here, and immediately that he had been promoted to supervisor he had never paid any dues since, so he could not be considered a member.

Q. But he was still allowed to attend meetings?

A. Still allowed to attend meetings; yes. And Messrs. Buckley and Layman had filled out applications for membership in the ARTA on the previous day.

Q. Can you give me the full list of strike captains that were appointed by the union in connection with this strike?

486 Trial Examiner EICKHOFF. Can you?

A. No; I have testified to that on direct.

By Mr. MERRICK:

Q. How many of them can you remember?

A. Mr. Palmer.

Q. Anyone else?

A. No.

Q. You weren't one?

A. I was not one.

Q. And he was present at this meeting, was he?

A. Yes.

Q. And at that time Palmer and Martinelli were two of the three members of your Relations Committee, weren't they?

A. I don't know.

Q. You don't know who the members of your Relations Committee were on October 4th?

A. Of 1935?

Q. 1935.

A. I do not know.

Q. Pardon?

A. I do not know on that date.

Q. Did you hold any position in the union at that time?

A. I did not.

Q. Were you on any committees of any kind?

A. I was not.

Q. Has the strike ever been called off by your organization?

487 A. What do you mean by our organization?

Q. Well, either by your local or by the national organization?

A. [Pause.]

Q. It seems to be difficult for you to decide whether or not it has been called off.

A. It seems rather difficult for me to decide what you mean. When the men went back to work, it seems the strike was called off automatically.

Q. There was no official action taken either by your local or the national organization that you know of, in connection with terminating the strike?

A. Not that I know of.

Q. Is it possible under your organization to call a second strike against the same company while the first one is still going on?

I mean does this strike vote that was taken—I am quite sure it was September 13th or prior to that time—authorizing the officers to call a strike, that now continues indefinitely, since the strike is still on, and, therefore, they could go at any time and tell the men to leave their work, is that so?

A. Well, you are asking me for an opinion of constitutional law and I am not familiar enough with it to reply.

Q. I am not talking about constitutional law. We are dis-
488 cussing that only very little in the present proceeding. But under the rules of your organization—you must be fairly familiar with them, aren't you?

A. I was at one time.

Q. Well, as they existed at the time you were acquainted with them, would that permit the officers to call the men to leave their employment again as long as that original strike vote still remains on the record?

A. I don't believe so.

Q. That authority has never been rescinded, though, has it?

Trial Examiner EICKHOFF. He said he didn't know.

Mr. MERRICK. The other answer was to a conclusion. I am asking now, specific, whether that strike vote giving the officers the authority to call a strike has ever been rescinded.

A. I don't know.

By Mr. MERRICK:

Q. You attend most of the meetings of your local?

A. I attended meetings regularly from September 13th, the meeting of September 13th of 1935 up to and including the termination of the strike.

Q. And you have been attending the meetings regularly since?

A. Since that time?

Q. Yes.

A. No.

489 Q. Have there been any that you know of?

A. Not that I know of.

Q. You have attended every meeting since that time that you knew about?

A. I didn't know of any.

Q. There have been no meetings since September 25th, did you say?

A. I said that I attended all meetings from the period of September 13th up to and including the termination of the strike.

Q. And since that time?

A. Since that time I have attended none.

Q. You don't know whether there have been any or not?

A. I do not.

Q. Are you still a member of the local?

A. I still have the card; yes.

Q. Don't you receive notices of the meetings? Don't all members of the local receive notices of meetings?

A. Well, there are lots of times we receive notices of meetings through the mail; other times they are posted on the bulletin board in the office.

Q. You haven't received any through the mail?

A. All notices that were mailed to me, regarding meetings, were mailed to me at 22 Battery, and I have been up to 22 Battery street very few times.

490 Q. You have been there a few times?

A. I have been there a few times.

Q. Did you receive any notices?

A. I saw none there for me; no.

Q. Did you see any notices on the bulletin board about a meeting?

A. After the strike was terminated?

Q. Yes.

A. No; I haven't. I don't remember seeing any on the bulletin board, notices about meetings.

Trial Examiner EICKHOFF. We will take a recess until 2 o'clock.

(Thereupon, at 12:05 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2:10 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner EICKHOFF. Are you ready?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. Will you resume the stand, Mr. Loudermilk?

Mr. LIVINGSTON. Will the Examiner permit me to be excused at a quarter to three this afternoon? The hearing can go on, but I would like to be excused personally.

Trial Examiner EICKHOFF. Certainly.

491 Mr. LIVINGSTON. Granted?

Trial Examiner EICKHOFF. Delighted.

Mr. LIVINGSTON. I was afraid of that.

ALONZO B. LOUDERMILK, the witness on the stand at the time of the recess, resumed the stand and testified further, as follows:

Cross examination by Mr. MERRICK:

Q. Mr. Loudermilk, are you acquainted with the principals of the communist organization?

Mr. EDISES. Objected to on the ground that it is incompetent, irrelevant, and immaterial.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. As I stated before, this question is addressed to the testimony given by this witness on direct examination as to the conference he had with Mr. Rodman, in which this witness testified that he discussed the question of communism and the relation of this union to communistic organizations.

Trial Examiner EICKHOFF. I don't recall any such evidence. I remember there was some incidental mention.

Mr. MERRICK. I am not arguing about it.

Trial Examiner EICKHOFF. I don't recall any discussion of the communist party, or communism.

Mr. MERRICK. Then it is objected to and the objection sustained?

Trial Examiner EICKHOFF. Yes.

492 By Mr. MERRICK:

Q. Are you in sympathy with the doctrines and principles of the communist organization?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. I am asking these questions addressed to another part of this case. Under the Act the Board has the power, as mentioned by the attorney for the board this morning, to order reinstatement if it sees fit to do so. It is my opinion that any testimony from these individuals along this line might be of some bearing on whether the Board desires to order their reinstatement.

Mr. EDISES. The Act does not say anything at all, as far as I know, about the question of a person's political belief or affiliation. If Mr. Merrick has some specific data on Mr. Loudermilk, if he has evidence, for example, that will link Mr. Loudermilk personally and definitely with the sort of organization or thing that he speaks of, that is another matter. But all these general questions have nothing to do with——

Mr. MERRICK (interrupting). This is hardly a very general question. It is a very specific question. Whether or not I have anything to show is a matter that I do not have *do* disclose at the present time.

Mr. EDISES. Certainly, this is not the time to introduce it anyway, if he did have.

493 Trial Examiner EICKHOFF. Proceed, please.

Mr. MERRICK. I have asked a question.

Trial Examiner EICKHOFF. Is there an unanswered question?

The REPORTER. No pending question.

By Mr. MERRICK:

Q. If you were re-employed by the company tomorrow morning, Mr. Loudermilk, and tomorrow night you should be told by an officer of ARTA to leave your work, even though you were supposed to be on duty, would you do so?

Mr. EDISES. I object to that question as hypothetical and speculative.

Trial Examiner EICKHOFF. I will allow the question.

A. Well, inasmuch as——

By Mr. MERRICK:

Q. Answer "Yes" or "No," and then you can qualify it as you wish afterwards.

A. No. I say "No" because I know that no officer of ARTA would have the authority to tell me to go on strike unless the meeting of that organization so stipulated themselves.

Q. I submit that you have not answered the question. I am asking you to assume that they did order you to strike. In that event would you leave your employment?

Trial Examiner EICKHOFF. If who ordered him?

Mr. MERRICK. The officers. Well, the president, vice-president, or Mr. Salisbury.

Trial Examiner EICKHOFF. He answered that question.

494 Mr. MERRICK. I beg your pardon. He said, "No, but the reason I am saying 'no' is because I know that no such order could be given." I submit that is not an answer.

Mr. EDISES. He said because they wouldn't have the authority. That is his answer. I object to that question and object to it being answered.

Trial Examiner EICKHOFF. I object to the pending question because it is repetitious. It is the same question all over again, it seems to me.

Mr. MERRICK. In the first place, I don't understand what the rule is that prevents you from asking a repetitious question when the answer is not clear. Aside from that, this witness has testified that at a certain time certain officers of the organization were empowered to call a strike. He has testified that so far as he knows that order has never been countermanded; that the strike, as far as the union is concerned, is still on. Therefore, that presumably any person who takes employment by the company while the strike is still on, as far as the union is concerned, is a scab and still subject to the authority vested in those officers by reason of these previous resolutions that, so far as he knows, have never been rescinded.

Trial Examiner EICKHOFF. I understood him to say, in answer to a question from you as to whether or not the strike was still on,

495 that it was not because all the men had gone back to work and that terminated it.

Mr. MERRICK. And further questioning, however, he had to admit that was simply his conclusion from the fact that they had gone to work, he thought that meant the strike was over; but no official action has ever been taken by the union to terminate the strike, and the resolution vesting these officers with the power to call a strike is still on the records.

Mr. EDISES. I submit that is counsel's own interpretation and that there is nothing in the record to sustain it whatever.

Mr. LIVINGSTON. May we ask a statement from counsel for the Board as to whether it has been rescinded? If so, that will end the argument. Has the resolution been rescinded? Let's find out.

Trial Examiner EICKHOFF. Do you know?

Mr. EDISES. We haven't gone into that. That will possibly come out later on testimony.

Mr. LIVINGSTON. Undoubtedly, Mr. Salisbury can tell us, through counsel for the Board.

Mr. SALISBURY. Yes; the strike was officially called off.

Trial Examiner EICKHOFF. Confer with Mr. Edises and then he can make any statement he cares to.

(Counsel Edises conferred with Mr. Salisbury.)

496 Mr. MERRICK. Off the record.

Trial Examiner EICKHOFF. Off the record.

(Discussion off the record.)

Mr. EDISES. The information that counsel for the respondent asks for is as follows: According to Mr. Salisbury, Mr. Stone was called——

Mr. MERRICK. (Interrupting.) I am going to object to this going on the record.

Mr. EDISES. You asked for it.

Trial Examiner EICKHOFF. If you are speaking for the record, the question is: Was the strike called off or not, officially?

Mr. EDISES. The answer is "Yes."

Trial Examiner EICKHOFF. Now, Mr. Merrick desires you to produce the minutes containing the resolution calling off the strike.

Mr. EDISES. Apparently it was not called off in that form. It was called off—do you still want me to keep this on the record, Mr. Examiner?

Trial Examiner EICKHOFF. If it is in response to his request for the production of the minutes; yes.

Mr. MERRICK. Why not have a discussion off the record to see what it is.

Trial Examiner EICKHOFF. All right, off the record.

(Discussion off the record.)

497 Trial Examiner EICKHOFF. Will you now put your statement in the record, Mr. Edises?

Mr. EDISES. On October 8th, at 1 o'clock p. m., eastern time, Mr. Pyle, National Vice-president——

Mr. MERRICK. (Interrupting.) Please state the source of your information.

Mr. EDISES. (Continuing.) According to information requested by respondent, furnished to me by Mr. Salisbury, Mr. Pyle phoned Mr. Stone, Mr. Salisbury being present, and notified Mr. Stone that the ARTA strike was officially off.

By Mr. MERRICK:

Q. Mr. Loudermilk, you heard that statement, didn't you?

A. I heard it; yes.

Q. Did you ever hear that information before?

A. Not in that manner; no.

Q. Did you ever receive notification by the union that the strike was off?

A. Written, you mean?

Q. I ask you first, have you ever seen a written notification that the strike was off?

A. No.

Q. Were you ever advised orally by an officer of your organization that the strike was over?

A. Yes.

Q. Who was that officer?

498 A. Mr. Rathborne.

Q. When did he tell you?

A. The day after the men went back to work.

Q. What did he say?

A. He said, "Well the strike is over and we notified the other fellows to go back to work."

Q. What time was that conversation?

A. Some time in the forenoon of October 9th.

Q. Before noon of October 9th?

A. Yes.

Q. You say about—Can you fix the hour accurately? Was it early in the forenoon?

A. I would say around 9 o'clock or 9:30.

Q. Around 9 o'clock or 9:30?

A. Yes.

Q. Did he tell you where he got his information?

A. No.

Q. But he said the strike was all off?

A. He told me that he had talked on the long distance telephone with Mr. Pyle, of New York, on the previous day; that is October 8th.

Q. And he said everyone was then supposed to go back to work; that the strike was over?

A. He said he had notified the offices here on the coast that they were supposed to go back to work.

499 Q. Who?

A. That he, Mr. Rathborne, had notified other ARTA locals.

Q. Did he tell you what means he was using to notify the employees themselves that the strike was over, and they should go back to work?

A. No; he didn't. I didn't inquire into it.

Q. Do you know of any other people that he informed that the strike was off?

A. No.

Q. You testified that at this meeting at the Bellevue Hotel, when they were about to take a vote on whether or not they were to return to work, you asked that each person who voted should write his name on the ballot. Is that your idea of the customary procedure in voting?

The WITNESS. Am I supposed to express my ideas there and answer the question?

Mr. LIVINGSTON. I suggest the witness——

Trial Examiner EICKHOFF. (Interrupting.) Do you object to him answering it?

Mr. EDISES. Let him answer.

A. He asked if that was my idea of the customary procedure. I will say it has been a practice in many instances, where I have attended meetings and the people have voted and signed their names to the ballot that they have voted on; yes.

By Mr. MERRICK:

500 Q. Is that the customary procedure in union meetings?

A. No. It is a lengthy procedure that we haven't been able to carry out.

Q. But at the present time, and up to the present time, you have not written your names on your ballots?

A. We have written our names on ballots pertaining to the working agreement which the men were drafting. Ballots of that type, which were appended to that.

Q. That was a ballot that was sent through the mail, not a ballot that was taken at a meeting?

A. That is correct.

Q. I am talking about ballots taken at a meeting. Do you ordinarily write your names on them?

A. If one would ask for a——

Q. (Interrupting.) Answer the question. You do not ordinarily do that?

A. No.

Q. What reason did you have for asking that this be done, that is, that they be written on at this meeting at the Bellevue Hotel?

A. For a matter of record.

Q. For whose record?

A. Anyone's.

Q. Did you understand this was a meeting of the union? Who was to keep the records?

501 A. I understood it was not a meeting of the union, according to the people who were conducting it.

Q. Who was to keep the record that you wanted to have made?

A. Possibly if the record had been made I would have made some attempt to keep it myself.

Q. And you would have taken that down to the union headquarters?

A. No. I may have taken it home with me when I went to bed.

Q. For what purpose would you have used that record?

A. Merely as a matter of record.

Mr. EDISES. I submit the question as to why he did this or that is immaterial. The fact is in evidence that he did it. Anything further along that line, I submit, it not proper evidence.

Trial Examiner EICKHOFF. I wouldn't want any further questions along that line. It is perfectly obvious that the witness wanted to know which way these men voted on the question. Isn't that it?

The WITNESS. Yes—like to have it for a matter of record.

Mr. LIVINGSTON. Will the Examiner rule so we will know that we are not entitled to know why he wanted to know?

Trial Examiner EICKHOFF. That has been asked and an-

502 swered, as to what he might do with it some time in the future.

Mr. MERRICK. I asked why he wanted to know.

Mr. LIVINGSTON. Why he wanted to know, unless the Examiner rules——

Trial Examiner EICKHOFF. (Interrupting.) Ask him why he wanted to know.

Mr. EDISES. I make the same objection to that question.

Trial Examiner EICKHOFF. I will allow the question.

The WITNESS. Why I wanted to know who voted that way?

Trial Examiner EICKHOFF. Yes.

A. As a matter of record. That record might have been produced here at this hearing. I would at least have enough foresight to foresee something like that.

By Mr. MERRICK:

Q. That is what you wanted it for, because, at that time you thought there might be a proceeding before the Labor Board?

A. I didn't think of any specific proceeding of any kind. I thought it might be necessary or might be convenient, or whatever you would like to term it, to have a record of the vote taken.

Q. That is the only purpose that you now recollect that you had in mind?

A. That is the only purpose I had in mind.

Q. You said that the vote taken just prior to the ballot was
503 that the question should be determined by a bare majority. Are you quite sure about that?

A. About what?

Q. A bare majority.

A. A majority is a majority, whether bare or overwhelming. If the question were to be determined by a majority, if it were 51 per cent, that would be a bare majority.

Q. Can you answer the question?

A. That is the answer. It answers the question. It was to be decided by a majority.

Q. I asked you whether you felt quite sure about that.

A. Yes; I am quite sure.

Q. Sure about that—are you as sure about that as you are about any of the rest of the testimony you have given in this proceeding?

Mr. EDISES. I suggest that question go off the record.

Trial Examiner EICKHOFF. I will allow it.

A. I know that the question was to be decided by a majority vote.

By Mr. MERRICK:

Q. And you feel as sure about that as you do about the correctness of any of the rest of the testimony you have given on the stand?

A. As reasonably certain as I do about any of the rest.

Q. And you don't feel more than reasonably certain about any of your testimony, is that correct?

504 Mr. EDISES. I object to that line of questioning, Mr. Examiner.

Trial Examiner EICKHOFF. Let him play it out.

Mr. MERRICK. What?

Trial Examiner EICKHOFF. Play it out.

The WITNESS. The question is.

By Mr. MERRICK:

Q. You feel more than reasonably sure about any of your testimony?

A. Oh, yes.

Q. What parts do you feel more sure about than you do about others?

A. I might say that I feel fairly positive about——

Mr. EDISES. I object.

Trial Examiner EICKHOFF. Do you object to the question?

Mr. EDISES. I object to that question, and any other questions, as hypothetical and speculative as that. Point to some specific section of his testimony if you went to.

Trial Examiner EICKHOFF. The objection is sustained.

Mr. MERRICK. That is up to the witness to do that.

By Mr. MERRICK:

Q. You testified that you feel a little more certain about some of your testimony than you do about other parts of your testimony. That is true, isn't it?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. I will allow that question.

By Mr. MERRICK:

Q. That is true? You don't want to change that testimony, do you?

505 A. Well—May I have the question?

(The question referred to was read aloud by the reporter as above recorded.)

Mr. EDISES. I object to the question. It is too general, Mr. Examiner.

Trial Examiner EICKHOFF. I will allow the question.

A. Naturally, in my testimony——

By Mr. MERRICK:

Q. Answer "Yes" or "No."

A. I can't answer "Yes" or "No."

Trial Examiner EICKHOFF. Answer "Yes" or "No," and then give your explanation.

A. Yes. Now, the reason for my feeling a little more sure of some of my testimony than other, is because of the fact that I remember those specific instances a little better, probably, than I do others.

Mr. MERRICK:

Q. Do you remember this matter of whether or not the question should be decided by a 51 percent vote pretty well or not so well?

A. I remember that the question was to be decided by a majority vote.

Q. And you on your direct examination said you meant by that, 51 per cent, didn't you?

Mr. EDISES. I don't believe he did say that.

Mr. LIVINGSTON. He did.

506 Mr. MERRICK. If he didn't, let's find out what he means by it now.

By Mr. MERRICK:

Q. Do you remember referring to that on your direct examination?

A. No.

Mr. EDISES. The record is the best evidence.

Mr. MERRICK. I am testing his memory, which I have a right to do.

The WITNESS. May I repeat what I have reference to?

Trial Examiner EICKHOFF. I do not think it matters, what the testimony is. Give your recollection at this moment.

The WITNESS. My recollection, or what I testified to?

Trial Examiner EICKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. Do you remember whether you said that or not?

The WITNESS. Yes; I remember that I said that.

By Mr. MERRICK:

Q. That is what you said?

A. Yes. Now, may I say something further?

Trial Examiner EICKHOFF. Not unless it is in response to that question.

By Mr. MERRICK:

Q. Now I ask you if your recollection as to that vote is as clear to you as that of any other part of your testimony?

507 A. Yes.

Q. And you feel as reasonably certain of the correctness of that statement as you do of any of the rest of your testimony?

Mr. EDISES. I object to that question, and similar questions along that line as too vague and indefinite, hypothetical and speculative, and it is impossible for him to give an accurate answer to a question as general as that, Mr. Examiner.

Trial Examiner EICKHOFF. I will allow the question for whatever it may be worth.

A. I will answer "Yes."

By Mr. MERRICK:

Q. As I understand it, Mr. Loudermilk, the reason why you didn't go back to work when the other men went back at 5:30 or 6:00 o'clock on the morning of Tuesday, was because you understood that it was useless for you to go back, is that so?

A. That is right.

Q. You weren't motivated by the same reasons that Mr. Rone testified to, that is, that he said he didn't go back, first, because he wanted to be sure that all married men got back first before he went back?

Mr. EDISES. I object to that question.

By Mr. MERRICK:

Q. That wasn't your motive?

Mr. EDISES. I object to that question.

508 Trial Examiner EICKHOFF. Overruled.

A. No; that was not my motive.

By Mr. MERRICK:

Q. On your direct examination you said that a letter had been sent to the company some time in February 1935, stating that you were not in good standing with the union, didn't you?

A. Correct.

Q. Did you ever see that letter?

A. Oh, yes.

Q. Is this a copy of it?

A. [Examining letter referred to.] Yes; that is a copy of it.

Mr. MERRICK. It might be marked for identification.

Mr. LIVINGSTON. Put it in evidence.

Mr. MERRICK. I offer this copy of the letter in evidence as respondent's Exhibit No. 2.

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. Has it been identified?

Mr. MERRICK. No.

Trial Examiner EICKHOFF. State what it is.

Mr. MERRICK. The statement is on the stationery of the American Radio Telegraphists' Association, Inc., 52 California street, San Francisco, California, dated February 8, 1935.

It is a letter addressed to Mr. H. L. Rodman, General Superintendent, Mackay Radio & Telegraph Company, 22 Battery

509 street, San Francisco, California, and signed by Roy A. Pyle, Acting Secretary of San Francisco Local, ARTA.

Trial Examiner EICKHOFF. Will you either tell me what it is or let me see it?

[Trial Examiner Eickhoff examining copy of letter referred to.]

Trial Examiner EICKHOFF. It is admitted in evidence as respondent's Exhibit No. 2.

(The copy of the letter referred to was received in evidence and marked "Respondent's Exhibit No. 2, Witness Loudermilk.")

By Mr. MERRICK:

Q. To your knowledge, has this letter, or the instructions contained in this letter to the company, ever been countermanded?

A. No.

Q. That is, you know that they have not been, or you don't know whether or not they have?

A. I don't know.

Q. Do you know why this letter was sent to the company, that is, in connection with what activities of yours the union expressed itself as not desiring to be bound by any negotiations or commitments made by you?

Mr. EDISES. I want to object to that question on the ground that it has not been shown by any competent evidence, or any evidence at all, that anything in this letter has anything to do with Mr.
510 Loudermilk's discharge or refusal to be re-employed, or any of the issues in this case.

If Mr. Merrick is going to bring up questions of internal politics and internal conflicts with the union, that have nothing to do with this case, it is possible that a great deal of information might be put into the record. But I submit that he has to lay a proper foundation before he asks any questions along that line.

Trial Examiner EICKHOFF. After all, we have gone pretty thoroughly into the internal relations of the union and the relation of one member to another, and I think that it is only fair to let them follow along.

Read the question, please, Mr. Reporter.

(The pending question was read aloud by the reporter as above recorded.)

Mr. EDISES. I object to that phraseology.

Trial Examiner EICKHOFF. I will sustain the objection.

Mr. MERRICK. I will reframe the question.

Trial Examiner EICKHOFF. Would you care to ask the witness if he knows why that letter was sent?

By Mr. MERRICK:

Q. These sentences appear in this letter, Mr. Loudermilk:

"Mr. A. B. Loudermilk can no longer be considered a member of good standing of this association.

"Please be advised that any commitments, promises, pro-
511 posals, or negotiations instigated or supported by Mr. Loudermilk are not binding upon this association in any way. Mr. Loudermilk has at no time been a duly elected or accredited representative of this association. In his present statue he can not legally be a candidate for the office of National Executive Committeeman."

Now, referring to the first sentence, I read:

"Mr. A. B. Loudermilk can no longer be considered a member of this association."

Do you care to explain the circumstances which resulted in the notification being sent to the company?

A. Yes; I will explain it.

Trial Examiner EICKHOFF. Do you want him to?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. Go ahead.

A. The first paragraph of the letter contains reference to Article so and so, paragraph so and so.

By Mr. MERRICK:

Q. Article V, Section 4.

A. You will note, by reference to our constitution, that it refers to the matter of payment of dues. If dues are in arrears three

months, and on proper notification from the secretary-treasurer, if that man don't pay his dues to date, he can be declared a member not in good standing.

Q. And that is the only basis for that statement?

A. That letter was sent after I had returned from New York
512 and Mr. Pyle had disagreed over some political tie-ups with the organization with me, and he had that opportunity to send that letter because I had neglected to pay my dues up to date.

Q. You say Mr. Pyle had some disagreement with you?

A. That is his name on the bottom; yes. So when this letter was sent, it only remained for me to pay up my dues, and that letter would have had to be rescinded over Mr. Pyle's signature, but I didn't see fit to pay my dues, and I let the matter ride as it was.

Q. Was there any special explanation that you have for the second paragraph, that you were not authorized to negotiate on behalf of the union?

A. "No longer negotiate," did it say?

Q. This says "At no time been a duly elected or accredited representative of this association."

A. I don't believe that it was ever stated that I was a duly elected and accredited member of this organization at any time.

Q. And you have never been—never have been?

A. I was chairman of the San Francisco point to point local.

Q. But this is signed by the National organization. It doesn't say that you were not authorized to represent the local and never have been.

Mr. EDISES. This doesn't have any reference to Local No. 3.

Mr. MERRICK. Through the signature it says "Acting
513 Secretary S. F. Local, ARTA," but this statement says, "Mr. Loudermilk has not been a duly elected or accredited representative of this association." The heading is, "52 California street."

Mr. EDISES. Do you know where the headquarters of this local organization are?

Mr. MERRICK. Don't ask me any questions.

Mr. EDISES. Well, I just asked you; I just pointed out something to you.

Mr. MERRICK. Well, I just pointed out something to you.

Mr. EDISES. It refers to the national association.

Mr. MERRICK. This letter says he is not a duly accredited representative of the local. You said, so far as you know, this letter has never been countermanded?

A. That is correct.

Mr. EDISES. Doesn't Mr. Merrick also want to ask about the last line in the letter?

Mr. MERRICK. I am not on the witness stand.

Mr. EDISES. It makes us even then.

Trial Examiner EICKHOFF. Let's read the whole letter and get this thing over with.

Mr. MERRICK. The whole letter is in evidence. I have understood this is my cross examination.

Trial Examiner EICKHOFF. Well, he questions your cross ex-
514 amination, and it is a question of this fragment or the other fragment whether they stand together or not.

Mr. MERRICK. Well, that is a matter for him on redirect.

Mr. EDISES. That's all right.

Trial Examiner EICKHOFF. If you want the whole document read, we'll have it read.

Mr. EDISES. Well, he asked——

Mr. MERRICK. (Interrupting.) There are no pending questions.

Trial Examiner EICKHOFF. All right.

By Mr. MERRICK:

Q. You then knew Mr. Pyle fairly well, Mr. Loudermilk? You said you had differences with Mr. Pyle. I say, you knew him fairly well?

A. Well——

Mr. EDISES. I want to object to the introduction of any evidence as to what personal differences Mr. Loudermilk may have had with Mr. Pyle. I fail to see they have any relevancy here.

Trial Examiner EICKHOFF. Well, as I said before, we have gone into the internal affairs of this organization so thoroughly on direct, the relationship of one man to another, that I'll permit it on cross examination, for what it may be worth. It may have no weight; I don't know.

A. Yes.

By Mr. MERRICK:

515 Q. Did you ever discuss with him the principles or doctrines of communism?

Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. When you went to Captain Dodd's office on Wednesday, the 9th, was it—Do you remember anything being said either by Captain Dodd or Mr. Jorgensen about there being no vacancies at the time you applied for employment?

A. Yes.

Q. Was that the reason given at that time for not putting you back immediately in your place?

A. No.

Q. You are quite sure about that?

A. Yes.

Q. What was the talk you had with them about vacancies?

A. I don't understand what you want me to say; I can't picture what kind of an answer you want.

Trial Examiner EICKHOFF. Just a minute. Will you rephrase it, counsel?

By Mr. MERRICK:

Q. You said that vacancies were discussed at this conference. I asked you if that was the reason given for not putting you back in your position. You said "No," so I asked you if that was the reason given for not putting you back in your position, and you said "No," so I asked you what was the discussion about vacancies.

516 A. I don't remember.

Q. Don't remember anything about it?

A. I might remember something in a general way, but I don't remember specifically.

Q. What do you remember in a general way about it?

A. That there was some discussion regarding not being any vacancies at the present time, because the staff had gone back to work and there were several men here from New York who were filling the other jobs, and so there were no vacancies.

Q. Did it ever occur to you, after this conversation that you had with Mr. Jorgensen before—after the meeting at the Bellevue Hotel—that the best way to touch his sincerity as to whether you would not be taken back was to apply for your job personally?

Mr. EDISES. Object, your Honor, on the ground that what occurred to him is not a matter to be brought in evidence.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. You did fill out an application for reinstatement—re-employment, did you, Mr. Loudermilk?

A. Yes.

Q. I show you this sheet of paper and ask you if you recognize that as the application which you filled out. That is your signature?

A. Well, this is not the application itself.

517 Q. Is that your signature?

A. Yes; that is my signature. The application is this form here.

Q. Do you remember that this matter was typewritten here before you signed here?

A. Naturally.

Q. Answer "Yes" or "No."

A. Yes.

Mr. MERRICK. I offer this in evidence——

Mr. EDISES. (Interrupting.) May I see it, please?

Trial Examiner EICKHOFF. The one sheet that you showed him?

Mr. MERRICK. Well, I'd like to offer the whole file on it—part of it has been—I think this is one of those that has already been requested by the attorney for the Board, but he has not offered them.

Trial Examiner EICKHOFF. Will you identify by each sheet that you offer in evidence?

Mr. MERRICK. I am going to offer them presently. The first is a sheet entitled "Personal History Record," a printed form, some mat-

ters filled in in typewriting, some in pencil, bearing the signature in ink, "A. B. Loudermilk." And that is your signature?

A. Yes. [Witness examines document referred to above.]

Mr. MERRICK. (Continuing.) And attached to that is another
518 paper addressed from A. B. Loudermilk to Mr. A. C. Jorgensen, traffic manager, H. B., San Francisco, California, October 8, 1935—"Confirming my verbal application to you about 9 p. m., October 8th, please reinstate me in the H. B. operating force in my former position as Class A operator. My personal history record is attached."

Then follows the signature, "A. B. Loudermilk." Below that is a memorandum from A. C. Jorgensen, to Captain E. H. Dodd: "This application for employment, together with a number of others, which are being forwarded at the same time, is subject to final approval by Mr. E. W. Stone, Operating Vice-President.

"There are no vacancies in the H. B. operating force at present, and there were no vacancies at the time the applicant made his verbal application to me."

Trial Examiner EICKHOFF. Have you seen that?

The WITNESS. This is the first time I have seen the appendage to it.

By Mr. MERRICK:

Q. Is that correct?

A. That is correct. My signature is in the middle of the page.

Examination by Trial Examiner EICKHOFF:

Q. Well, who is going to identify the matters that you have never seen before?

519 Mr. MERRICK. We can put it in in any way you like. This has been requested by the attorney, and if he objects to it, we can put it in now or we can put it in later through another witness.

Trial Examiner EICKHOFF. May I see them?

Mr. EDISES. I have no objections.

By Trial Examiner EICKHOFF:

Q. Do you identify your signature on the matter just read by Mr. Merrick?

A. Yes; on the top portion of the page.

Q. The memoranda below over the signature, "Mr. Jorgensen," you have never seen before?

A. I have never seen before.

Mr. MERRICK. Just to make the exhibit complete, I would like to submit, although it can not be identified by this witness, the attachments to these applications which are part of that which has been requested by the attorney for the Board.

Mr. EDISES. Subject to their subsequently being identified.

Mr. MERRICK. Oh, certainly.

Trial Examiner EICKHOFF. May I see them? [Trial Examiner Eickhoff examines documents.]

Mr. MERRICK. This is the next one.

Trial Examiner EICKHOFF. What was your suggestion, Mr. Edises?

520 Mr. EDISES. That they subsequently be authenticated by the person responsible for them.

Trial Examiner EICKHOFF. Is that agreeable to you?

Mr. MERRICK. Oh, certainly; but I mean it is just part of the file.

Trial Examiner EICKHOFF. You offer these documents as one exhibit?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. With the understanding that the provisions which Mr. Loudermilk has not identified will subsequently be proved by you.

Mr. MERRICK. If not proved through the examination by the attorney for the Board. He has also requested that these be produced as I stated.

Trial Examiner EICKHOFF. It may be admitted as respondent's exhibit No. 3.

(The inter-office file, consisting of four pages, was received in evidence and marked "Respondent's Exhibit No. 3, Witness Loudermilk.")

Mr. MERRICK. The third sheet to this exhibit is headed: "Inter-Office Memorandum, dated October 12, 1935, from E. H. Dodd to H. L. Rodman, and reads as follows:

"Forwarded.

"In view of the fact that no vacancies now exist in the H. B. operating force, it is not recommended that Mr. Loudermilk be employed as requested by him.

"It is recommended that his application be placed on
521 file and given consideration at such future time as any vacancies may occur in the H. B. operating room."

Signed, E. H. Dodd.

The fourth sheet of this exhibit consists of another inter-office memorandum, dated October 14, 1935, from O. H. Rodman to Mr. Ellery W. Stone, and reads as follows:

"Forwarded.

"In view of the fact that no vacancies now exist in the H. B. operating force, it is not recommended that Mr. Loudermilk be employed as requested by him.

"It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the H. B. operating room."

The initials "H. L. R." and then beneath that the date, "October 26, 1935." It is a memorandum from Ellery W. Stone to H. L. Rodman, and reads:

"Returned.

"Your recommendation is approved and there is no objection to favorable consideration being given this application when a vacancy occurs at San Francisco."

The initials in ink, "E. W. S."

Mr. EDISES. May I ask counsel if the "E. W. S." refers to Mr. Stone?

Mr. MERRICK. Are the three initials of Mr. Ellery W. Stone.

By Mr. MERRICK:

522 Q. Mr. Loudermilk, did you ever learn of the action that was taken on your application?

A. I was told of the action by Mr. Jorgensen that was contemplated.

Q. That is, he told you that your application would be taken and forwarded?

A. Forwarded.

Q. Did he tell you that he had recommended that you be placed upon the list of those who would be considered in the case of the first vacancies?

A. Yes.

Q. Did he tell you that Mr. Stone had subsequently approved that recommendation?

A. Yes.

Q. You have no reason to doubt the correctness of the time stated here at which your application was received, have you?

A. What do you mean?

Mr. EDISES. Will you specify that?

By Mr. MERRICK:

Q. It says in your memorandum from you to Mr. Jorgensen, "Confirming my verbal application to you about 9 p. m. October 8th."—You have no reason to doubt that was about the time you wrote?

A. No.

Q. Mr. Loudermilk, I presume you have heard about the boycott of Mackay Radio Company, have you?

A. Yes.

523 Q. Were you present at any meeting at which this boycott was authorized?

A. Yes.

Q. When was that meeting?

A. It was September 13, 1935.

Q. You mean that was the same meeting at which the strike action was authorized?

A. That is true.

Q. And at that time the officers were authorized to declare a boycott along with the strike; is that right?

A. Yes; that is correct. I believe the best evidence will be that motion itself. I don't remember the exact wording.

Q. Were you present at the time the motion was put?

A. Yes.

Q. How did you vote on it?

A. I voted "Yes."

Q. You voted in favor of the boycott?

A. Yes.

Q. When was the boycott officially declared effective?

A. I don't know.

Q. When did you first hear that it had been made effective by your union?

A. I didn't hear.

Q. Do you know that it is supposed to be effective now?

A. I do not know.

524 Q. You have never been informed by any other member of the union that the boycott had been declared?

A. No.

Q. Do you read the publication of your national organization at all?

A. Sometimes.

Q. Do you remember whether you ever saw the October issue?

A. 1934, or when? [Laughter.]

Q. 1935.

A. I believe that is the issue you showed to me this morning.

Q. You have never seen it before?

A. Yes; I have seen it before.

Q. Do you remember seeing the back cover of that issue?

A. I saw it this morning.

Q. That was the first time you saw it?

A. I remember seeing it this morning.

Q. Was that the first time you remember ever having seen it?

A. Seeing it this morning refreshed my memory that I saw it before.

Q. Did I show the back cover of that magazine this morning?

A. Yes; you did. Maybe you did it inadvertently, but you did. I know that I have seen it before. That is the reason I have seen it before.

525 Q. Then you had seen the large block letters, "BOYCOTT MACKAY! BOYCOTT MACKAY! SEND YOUR MESSAGES BY RCA, WESTERN UNION AND GLOBE," is that right?

A. That is right.

Q. Have you followed that admonition yourself?

A. To the best of my ability. I haven't sent any telegrams. I haven't had any occasion to send any one a telegram.

Q. Have you urged any one else to follow the admonition in that advertisement?

A. No; I haven't.

Q. Have you been requested by any officials of your union to try to induce others not to employ the services of this company?

A. No.

Q. If you were requested to do so, would you do so?

Mr. EDISES. Isn't that question just a little bit speculative and hypothetical, Mr. Merrick?

Mr. MERRICK. How hypothetical, you may be in a better position to know than I know.

Trial Examiner EICKHOFF. I don't think that the witness need be called upon to testify what he would do in the future in that regard. I sustain it.

Mr. MERRICK. I state it is relevant testimony, very material, on the basis that the Board has the power to reinstate the people or order to reinstate them, rather. I think that is information that they might perfectly legally be entitled to consider. I also think
526 that it is the kind of information that the company is entitled to consider, to take into consideration, to determine what people to employ, and what not to employ. One of the charges in this proceeding is that this man had been discharged, and he has been refused employment solely by reason of his membership in a union. The questions are addressed to show that there are other circumstances which the employer is entitled to in determining what people he will have on his pay roll and what people he does not care to have on his pay roll.

Mr. EDISES. Mr. Merrick, I have no objection to the question along those lines, if you will limit it to whether or not he will support a boycott against the company in case his re-employment were ordered by the Board. But your use, at this particular moment, I don't think has any bearing on his efficiency.

Mr. MERRICK. I understood that the position taken is that he is an employee of the company, that so long as he has no other employment he considers himself that he remains an employee. If that is the case, we are entitled to know what his views are today and what they were last week.

Trial Examiner EICKHOFF. But not what they may be some time in the future.

Mr. MERRICK. Oh, yes; we are entitled to know what they are going to be on the day after tomorrow.

527 Trial Examiner EICKHOFF. I think what the witness, you, I, or anybody else, will do in the future, will depend on a lot of circumstances, and I don't feel that the witness need answer that question, and I rule accordingly.

Mr. MERRICK. I am perfectly willing to build up as many errors as you desire.

By Mr. MERRICK:

Q. In your opinion, Mr. Loudermilk, is the boycott justified? I first asked you about the boycott of Mackay Radio, Marine, and point to point.

A. You say, in my opinion.

Q. That is right.

The WITNESS. I don't know where I stand, Mr. Examiner. I was admonished for expressing opinions yesterday, but today I am supposed to express them.

Trial Examiner EICKHOFF. Would you prefer not to answer the question?

The WITNESS. Yes.

Trial Examiner EICKHOFF. Then you need not.

By Mr. MERRICK:

Q. Do you believe the boycott is justified as to Postal Telegraph Company, Commercial Cable Company, and Commercial Pacific Company?

Mr. EDISES. I object to that, your Honor. I don't see that that has anything to do with the matter.

Trial Examiner EICKHOFF. Objection sustained.

I think we had better take about a five minute recess
528 now.

(At this point a recess was taken, after which proceedings were resumed as follows:)

By Mr. MERRICK:

Q. Mr. Loudermilk, if you were reinstated by the company, and then were directed by the officers of your local to take an active part in the boycott against the Mackay Radio and associated companies, would you do so?

A. I don't see how I can answer that question.

Q. You can't answer?

A. What?

Q. You can not answer?

Mr. EDISES. That is another hypothetical question that can't be answered by this man. How does he know what his state of mind will be at that time?

Trial Examiner EICKHOFF. Well, if he doesn't know, he can say so.

A. I couldn't say.

By Mr. MERRICK:

Q. It is possible that you might?

A. I don't know.

Q. Have you in mind at the present time the conditions which would have to be met in order to enable you to make up your mind whether or not you would take an active part?

Mr. EDISES. I object to that. That is too speculative.

Trial Examiner EICKHOFF. I will allow the question, if the wit-
ness can answer it.

529 A. I can't answer it, because the question is too general. I don't see anything specific to answer.

By Mr MERRICK:

Q Have you written, or assisted in the writing of, any of the boycott literature that has been put out by your union?

A. No.

Q. Do you know who did?

A. No.

Examination by Trial Examiner EICKHOFF:

Q. Was the boycott supported by the point to point group?

A. No.

Q. Was there any action by your local which would have bound your group to observe it, according to your rule?

A. I believe not.

By Mr. MERRICK:

Q. Is Western Union, to your knowledge, in competition with the marine division of Mackay Radio?

Mr. EDISES. I object to that. There is better evidence than this man's opinion on that question.

Trial Examiner EICKHOFF. I'd like you to indicate where you might be leading to, Mr. Merrick.

Mr. MERRICK. I refer to an advertisement, or notice, on the cover of the issue of "ARTA," on October 1935, which has already been referred to previously, which reads:

"Boycott Mackay! Start, spread, and keep up a vigorous
530 boycott until Mackay Radio enters into an agreement with the American Radio Telegraphists' Association! Boycott Mackay into reinstating its black-listed employees. Send your messages via RCA, Western Union and Globe!"

Mr. EDISES. I object to that question on the ground there is no reason why this man should be cross examined on a matter which the editors have put into that magazine in New York, where it is published. There is no reason for it.

Trial Examiner EICKHOFF. Maybe the quickest way out of this will be to let him answer the question.

The WITNESS. What is the question?

(The question referred to was read aloud by the reporter as above recorded.)

A. I don't know.

Q. You don't know whether or not it is in competition with the Mackay Radio?

Mr. EDISES. I want to object to that question.

Trial Examiner EICKHOFF. Before you do, I think you can clear that up. I asked him to indicate where he was leading. He then read that to show you the question, in response to some inquiry that I addressed to him.

Mr. EDISES. He read into the record something about the relevancy of which has not been established.

Trial Examiner EICKHOFF. I know.

531 Mr. EDISES. But which nevertheless is in the record, and in my opinion——

Trial Examiner EICKHOFF. (Interrupting.) It is nothing to conceal. They can put it in if he wants to.

Mr. EDISES. If he wants to do that, he can read into the record a good many things.

Trial Examiner EICKHOFF. Well, we'll take those up when we come to them. This is the end. We have all heard it. Let's go; it is getting on.

By Mr. MERRICK:

Q. Do you know of any——

Trial Examiner EICKHOFF. (Interrupting.) Do you doubt the accuracy of the matter which Mr. Merrick read?

Mr. EDISES. We have no way of checking the evidence.

Trial Examiner EICKHOFF. Well, you can look at it now.

[Counsel Edises examines document.]

By Mr. MERRICK:

Q. Do you know of any marine stations operated by Western Union?

Mr. EDISES. I object to that question. I fail to see that that question has anything to do with matters in hand, and it can be established, certainly from much more authorized men than by questioning this witness.

Mr. MERRICK. This witness has testified that he has worked for RCA for seven years, and that he has testified he has worked for other companies for several years.

Mr. EDISES. He didn't testify that he worked for Western Union, did he?

532 Trial Examiner EICKHOFF. I think we are getting pretty far afield. I won't want much cross examination along that line, Mr. Merrick.

Mr. MERRICK. Well, this is not very far afield, Mr. Examiner. I am asking about his views on this boycott. He said in his opinion the boycott applied only to the marine division. I am calling to his attention an advertisement in the official magazine of his union to boycott Mackay Radio. What I am asking to know is, if he knows any reason for boycotting it—such as giving aid in boycotting the marine business, in giving messages to the Western Union.

Trial Examiner EICKHOFF. I know, but all of this testimony has been to the effect that he is not concerned with the boycott.

Mr. MERRICK. Well, he hasn't been yet. I am asking him now as to what his attitude would be in the future if he were in the employ of the company, whether or not there is a boycott by his union against the point to point division of Mackay Radio, as well as against the marine division.

Trial Examiner EICKHOFF. But I have sustained the objection to that line of testimony, as to what his attitude might be at some time in the future.

Mr. MERRICK. I didn't understand that you had. He said, "I couldn't answer."

533 Trial Examiner EICKHOFF. Prior to that, I have ruled against you on questions on what he might do if reemployed.

Mr. EDISES. I want to object to anything that appears in that magazine. It has not been established that it is binding on the point to point local.

Trial Examiner EICKHOFF. This is cross-examination.

By Mr. MERRICK:

Q. If it is a fact, Mr. Loudermilk, that this boycott runs against, not only the marine stations of the Mackay Radio, but against the point to point stations, do you consider it your duty, as a member of the union, to support that boycott as against the point to point business?

Mr. EDISES. I object. It assumes something not in evidence, namely, that there is a boycott binding upon Mackay.

Trial Examiner EICKHOFF. Objection sustained.

Mr. MERRICK. It isn't a question whether it is binding or not. You mean you are excluding a hypothetical question.

Trial Examiner EICKHOFF. Yes.

By Mr. MERRICK:

Q. If you were reinstated by the company, put back to work in the H. B. operating office, and you were instructed by members of the union to do everything that you could to discourage people
534 from using the point to point facilities of the Mackay Radio, would you follow your instructions?

Mr. EDISES. I object to that question on the ground it is hypothetical.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. If you were put back in the employ of the company would you consider that you should obey the instructions of the officers of the company in those instances in which they clashed with instructions you might receive from officers of your union?

Mr. EDISES. Same objection, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. I show to you a paper entitled, "Boycott Mackay Radio" and ask you if you have ever seen that before.

Trial Examiner EICKHOFF. Let counsel see it first, then you can read it.

[Counsel Edises examines paper.]

Trial Examiner EICKHOFF. Do you want him to examine all of it now, or just the first sheet?

Mr. MERRICK. Just the first sheet.

[Witness examines paper.]

A. I have never seen this before.

By Mr. MERRICK:

Q. Have you ever seen any literature, notices posted on the
535 bulletin board in your union hall on the subject of this boycott?

A. I have never seen anything. May I make further comment on that answer?

Trial Examiner EICKHOFF. Well, if you want to qualify the answer; yes.

The WITNESS. Yes; I don't wish to convey the impression that they don't exist, merely because I haven't looked for them. I haven't bothered to look.

By Mr. MERRICK:

Mr. Loudermilk, what is the definition of a scab?

Mr. EDISES. I object to that question. I don't see that his opinion as to the definition of a scab has any particular pertinence.

Trial Examiner EICKHOFF. I don't see any harm in it.

By Mr. MERRICK:

Q. Do you know the definition, Mr. Loudermilk?

A. Well, I know a definition. A low and "churlish" person is the word that Shakespeare said a scab was. [Laughter.]

Q. Have you any more technical definition of when a man is a scab and when he is not a scab?

A. Webster says that a man is a scab who works for a lower rate of pay than someone else who is on a job, or when he works under conditions where a strike prevails. In other words, when you take a man's job who is on a strike, that man is known as, and termed
536 as a scab. Webster further states that he is a "rat."

Q. You believe that, too? That is your opinion?

A. I am not quoting my opinion; I only know what I read in the papers.

Mr. EDISES. I object to that question calling for whether that is his opinion or not.

Trial Examiner EICKHOFF. The question is whether that is his definition.

Mr. MERRICK. Well, I asked for a definition which he declined to give except to quote Shakespeare and Webster.

Trial Examiner EICKHOFF. Do you doubt Webster's definition, or have you a different one?

The WITNESS. I think Webster's definition is sufficient.

By Mr. MERRICK:

Q. That is the sense in which you use it?

A. Yes.

Q. Any person who accepts a lower rate of pay is a scab?

Mr. EDISES. I object to that.

Trial Examiner EICKHOFF. This is cross examination, Mr. Merrick.

By Mr. MERRICK:

Q. Will you define the scab as you use the term, without referring to anybody else at all?

A. A man, particularly a man, who would come into a job and work for less money than somebody who had been working on that job before.

537 Q. But if he comes in and gets the same rate of pay, he is not a scab?

A. That is not the definition of the term as I look at it. He is scabbing on a man by taking his position.

Q. Do you consider any person a scab who comes in during a strike and takes the place of a strike breaker before the strike is terminated?

Trial Examiner EICKHOFF. You mean a striker, not a strike breaker?

Mr. MERRICK. Yes.

A. Yes.

Q. Do you remember having read the August 1935 issue of "ARTA," or any part of it?

A. No; I don't remember.

Q. In that issue there is an article, a little poem, entitled "Ode to the Strike Breaker."

Mr. EDISES. Mr. Examiner, I want to object to that evidence. What earthly connection can that have?

Mr. MERRICK. Wait until the question is put, will you.

It says here in this poem that the "louse is the vilest thing that crawls upon the earth, but the strike breaker is even lower than the louse. He is the vilest of the vile."

That is the proper definition of a scab? Do you subscribe to those sentiments?

538 Trial Examiner EICKHOFF. You need not answer that question if you don't want to.

Mr. EDISES. I suggest that Mr. Merrick, if he desires, read the rest of the poem in evidence. I believe he left out part of it.

Trial Examiner EICKHOFF. Frankly, I think you are wasting time.

Mr. EDISES. There is a question.

The WITNESS. The Examiner said I need not answer the question.

Mr. MERRICK. Yes; he volunteered that much to assist you. Do you wish to refuse to answer?

Mr. EDISES. I object to that question and request that the witness be instructed not to answer.

Trial Examiner EICKHOFF. Well, I will allow it. It is harmless, certainly, unless the witness prefers not to answer it.

Mr. MERRICK. You are not a scab are you, Mr. Edises?

Mr. EDISES. No, thank you; I am not a scab.

By Mr. MERRICK:

Q. Why so much difficulty, Mr. Loudermilk?

A. I have no difficulty.

Q. Why don't you answer? Do you subscribe to those sentiments, or don't you?

A. No. I don't subscribe.

Q. You said you thought the scab was a rat, didn't you?

539 A. I said that was Webster's terminology.

Q. You think that is a good definition?

A. I think that would suffice.

Q. I show to you a mimeographed sheet entitled "PTP"——

Mr. EDISES. (Interrupting.) May I see it first?

Q. (Continuing.) Dated November 15, 1935, "Mackay Radio Before the Labor Board." Have you ever seen that before?

Mr. EDISES. May I see it?

[Counsel Edises examines paper.]

Mr. EDISES. Do you wish to introduce both pages?

Mr. MERRICK. No; I am not introducing any of it.

[Counsel Merrick hands paper to witness.]

A. I have not seen that before.

By Mr. MERRICK:

Q. In this publication it gives this definition of a scab:

"Pimp and pickpocket, thief and footpad, swindler and slugger, fence and fugitive, briber and usurer, blackmailer and extortionist, wire tapper and abductionist, gambler and gunman, dope fiend and rapist, murder and madman."

Are those proper characterizations of the way in which you look on a scab?

Mr. EDISES. I'll object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

Q. Do you associate with scabs, Mr. Loudermilk, of your
540 own violition, knowing that they are scabs?

Mr. EDISES. Object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. The relevancy of this is, that, according to his definition, most of the men in the office where he says he would like to be employed are scabs. I think it is quite proper to ask him whether he would voluntarily like to return and be associated with them.

Trial Examiner EICKHOFF. I think he has already answered that question.

Mr. MERRICK. Then, you exclude it on the grounds that it has already been answered, not on its relevancy?

Trial Examiner EICKHOFF. I mean this: He was perfectly willing to return to work.

Mr. MERRICK. I am cross examining him on that question.

Trial Examiner EICKHOFF. I understand that. You asked him "Do you associate with scabs?"

Mr. MERRICK. I said, "Do you voluntarily associate with them?"

Trial Examiner EICKHOFF. I don't see that this is relevant. He is not now at work.

Mr. MERRICK. I think this is perfectly proper examination to question his good faith in making the answer which he made to his counsel and which the counsel advised the witness beforehand
541 it was necessary to answer in the affirmative if he was going to make out with this Board.

Mr. EDISES. I object to what I told the witness.

Mr. MERRICK. Well, if you didn't go over this with your witness before, I am surprised.

Trial Examiner EICKHOFF. I disallow that question, "Do you associate with scabs?"

By Mr. MERRICK:

Q. Are you desirous of returning to a place where you would have to associate with scabs eight hours of the day?

Mr. EDISES. The same objection.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

Q. Just before you walked out of the H. B. office, before you failed to report back at the time you were supposed to, what circuit were you working in the office, Mr. Loudermilk?

A. You mean when the strike was called?

Q. Just answer that.

A. I can't answer that question; I don't understand it.

Q. Where were you working the last time that you worked in the H. B. office?

A. I was working on the circuit termed the New York circuit, the New York-San Francisco circuit.

Q. Do you know whether or not, at the present time, there are working on that circuit, persons whom you nominate as scabs?

542 A. I do not.

Q. Is Mr. Monroe, according to your definition, a scab?

Trial Examiner EICKHOFF. Who is Mr. Monroe?

The WITNESS. I don't know.

By Mr. MERRICK:

Q. Well, one of the men who came here from New York at the time the strike was effective, and took up position in the H. B. office, is a scab, according to your definition, is he not?

A. Yes.

Q. And if one of those persons is working that circuit at the present time, and if you return to your former position, and were put along the same tape with him, sitting beside the same table, would you feel that you could stand that close association with that scab?

Mr. EDISES. I object to that question on the ground that it is hypothetical. It is not possible for the witness at this moment to know what he would be feeling like if reinstated.

Trial Examiner EICKHOFF. I think I allowed a similar question to Mr. Rone, if he chose to answer it, and I'll allow this witness to answer if he chooses to.

A. I'll answer the question. I'll say, "Yes." Yes, I would work alongside of him without impairing my ability at all. As far as my being alongside of that man, or working alongside of him, or

543 any other so-called or so-termed scab, would not affect my personal ability one iota.

By Mr. MERRICK:

Q. And you don't think there would be much friction between you?

A. Not unless he were to cause it.

Q. I take it your feeling towards scabs is not so violent as the feeling that Mr. Rone testified to on the stand?

Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Were you one of those who were present at the time Mr. McLaughlin was assaulted, Mr. Loudermilk?

Mr. EDISES. I object to that question on the ground it is assuming something not in evidence.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Do you know anything about the assault on Mr. McLaughlin?

Mr. EDISES. Same objection; it is assuming there was an assault.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Do you know whether or not there was an assault on Mr. McLaughlin?

Mr. EDISES. I suggest that the attorney specify the time and place.

Trial Examiner EICKHOFF. That is right.

By Mr. MERRICK:

Q. Well, it was some time between the end of the strike and
544 the end of the month of October. Do you know anything about an attack on Mr. McLaughlin?

Mr. EDISES. I object to that question on the grounds, in the first place, it is too vague; the time isn't specific enough; and in the second place the question isn't specific.

Mr. MERRICK. If there were more than one attack he might ask which one I refer to, if he knows about any.

Mr. EDISES. Please specify where this attack took place.

Mr. MERRICK. I said, if he knows about several, I will try to identify one.

Mr. EDISES. I suggest you identify as accurately as you can before you put the question.

Trial Examiner EICKHOFF. Do you remember it?

The WITNESS. Yes.

A. I don't know anything about the attack, other than what Mr. McLaughlin told me.

By Mr. MERRICK:

Q. Did you go down to the airport at the time the men were expected to arrive from New York during the strike?

A. No.

Q. Were you present at the union hall when any discussion took place as to whether or not some men should not go down there to meet the operators coming from New York?

A. Oh, I heard comment several times coming from several angles, in regard to things of that kind.

545 Q. What did you hear about this particular matter?

A. Well, I heard a lot of people say, "Let George do it."

Q. Do it?

A. Do something to prevent the scabs from coming to work.

Q. Do you know what was done?

A. I don't know that there was anything ever done.

Q. You don't know of any thugs being hired to go down to the airport?

A. No.

Q. Did you hear any discussion at the union hall about such matters?

A. No.

Q. You referred to certain misrepresentations given out by the company as to the progress of the strike in New York, or the effectiveness of the strike. In what respect did the company in New York, according to your likes, misinform its employees as to the effect of this strike—effectiveness of this strike?

A. I don't recall testifying that there are several instances, as you put it, of misrepresentation on the part of the company, and I don't know to what you particularly refer.

Q. I refer to testimony that I think you gave that the company represented that the strike was a failure in New York, where, as a matter of fact, it was a success.

A. The only instance that I recall of referring to a matter
546 in that manner was the letter that Mr. McLaughlin was showing to members of the ARTA, at the ARTA headquarters, on the afternoon of Monday, October 7th, which letter was on Mackay Radio stationery and signed with the initials of Mr. Watson, the manager of the Lobitos station.

Q. Watkins, isn't it?

A. Yes; Watkins, I think.

Q. Yes; it is Watkins. What was the statement that he read, or purported to read from that document, that you thought was a misrepresentation?

Mr. EDISES. I believe that the statement itself would be the best evidence of that. I believe it is available, Mr. Merrick, if you want it. Do you want it?

Mr. MERRICK. All right.

Trial Examiner EICKHOFF. Have you some other line that you could go to, because we'll adjourn in just a few minutes.

Mr. MERRICK. Maybe if we have a minute or two, I can——

Trial Examiner EIKHOFF. Well, it is nearly four o'clock.

By Mr. MERRICK:

Q. I think you have testified, Mr. Loudermilk, that you were not active on any committees, or work of the union, in February 1935, up to the time of the strike?

A. That is right.

Trial Examiner EICKHOFF. By the way, have you added up the amount of your earnings?

547 The WITNESS. Not yet; it won't be very much.

By Mr. MERRICK:

Q. I show you a sheet of paper having in printed words at the top, "Mackay Radio and Telegraph Company, Inter-office Memorandum," dated October 6, 1935, to Henderson, Gaspar, Oldaker, Ferguson, Jenkins, McGeorge, Jenkins, Ferguson, Holgerson, Kesler, Cady, Minaker. It is headed "Now on strike." Is this the paper that you think you saw in the hands of Mr. McLaughlin, at the ARTA hall, the afternoon of Monday, October 7?

A. I didn't see this in the hands of Mr. McLaughlin. This is the paper that Mr. McLaughlin was talking about.

Q. How do you know?

A. Because he repeatedly referred to the reference, "84 men out of 93," and this letter was on Mr. Rathborne's desk at the ARTA headquarters all that day.

A. And Mr. McLaughlin simply picked it up and read from it; is that right?

A. That is probably what he did.

Q. This is a statement to which you referred as being something that was misrepresented by the company?

A. Yes.

Q. That is there were "84 out of 93" at the M. K. office now at work?

A. Correct.

Q. What reason have you to believe that that statement was

548 not correct?

A. What reason? I don't believe there are 84 employees in the M. K. office all together. I mean, operators who are members. I am not referring to messenger boys and service clerks, and tube people, and so forth.

Q. Aren't they all eligible for membership in the ARTA?

A. They are not eligible for full membership in ARTA.

Q. Eligible for full membership or associate membership?

A. Associate membership, probably they are.

Q. So that your sole reason for stating that the company made a misrepresentation as to strike conditions was that in this memorandum it stated that at M. K., "84 out of 93 are at work." It was impossible, because in your opinion there weren't 84 men working at the M. K. office at any time?

A. There weren't 84 operators at M. K.

Q. It doesn't state that.

A. That is what they wished to convey, however. After all, it is an operator's strike.

Q. Was the strike limited to operators here in San Francisco?

A. No; it wasn't limited to operators.

Q. You called out everybody, didn't you?
A. Members of our organization.
Q. And no one else?
A. We called out members of our organization.
Q. And no one else?
549 A. How could you call out anybody that were not members?
Q. Did you try to prevent operators who were not members of your organization from going to work?
A. Presumably, we might have tried.
Q. Of course, always assuming that. Do you know how many people were employed at the M. K. office at the time of this strike?
A. People, or operators?
Q. Total number of people employed there.
A. No.
Q. Have you any reason to believe that there weren't 93?
A. No.
Q. Any reason to believe that 84 out of that 93 were not back at work at the time this memorandum that you have, was written?
A. Yes.
Q. What reason have you?
A. That there weren't that many operators in that office.
Q. It doesn't state operators, does it? Let me read the full message.
A. I understand what it states there.
Q. I read:
"No ARTA employees or others went out at Rockland, West Palm Beach, Chicago, Washington, or New Orleans, and full service
550 has been given uninterruptedly at all stations of the Delaware company stop. At M. K. 84 out of 93 are at work."
Now, you think that there is some hidden meaning there, tending to try to convey the impression that 84 of those men were operators?
A. Yes; I mean by that, that the men were naturally—that the men would naturally assume that they were talking about operators.
Q. As you weren't interested—the union was not interested in the pay or the working conditions of any of the employees of the company other than the operators?
A. I refer you to our agreement.
Q. Answer that question.
A. The agreement points out the fact that we were interested in others besides operators.
Q. Then, why do you assume that they are trying so surreptitiously to suggest that they mean by that, operators?
A. If my arithmetic serves me correctly, 84 from 93 leaves a total of eight, is that correct?
Q. I think you are correct.
A. One reason why I didn't believe that is because I had information from our own office in New York that there were more men out on strike at that particular moment.
Q. What was the source of that information?

A. A telegram from the New York office of the ARTA.

Q. Can you produce that telegram?

551 A. I don't know.

Mr. EDISES. Which particular telegram are you referring to?

The WITNESS. A telegram concerning the number of men that were out on strike.

Mr. EDISES. Well, we'll see if that is available, and try to have it for you.

Trial Examiner EICKHOFF. Is that the only inaccuracy that existed in that letter, according to your belief?

The WITNESS. In regard to the other stations that were mentioned there, I had no specific information, one way or the other, about them.

Trial Examiner EICKHOFF. I don't think we'll take up anything further today.

Mr. MERRICK. I have just one or two questions, and then I'll be finished.

Trial Examiner EICKHOFF. All right, one or two.

By Mr. MERRICK:

Q. I would like to call to your attention an article entitled "The Mackay Strike," by O. M. Salisbury, in the October 1935 issue of "ARTA." Do you know Mr. Salisbury?

A. Yes.

Q. You think that Mr. Salisbury is apt to make a true and correct statement in a signed article by him in this magazine?

552 Mr. EDISES. I object to that question. I fail to see whether he thinks that Mr. Salisbury is inclined to make a true statement or not has any bearing on matters in hand.

Trial Examiner EICKHOFF. Go ahead.

Mr. MERRICK. Are you afraid of his answer, Mr. Edises?

Mr. EDISES. No.

Mr. MERRICK. Why object? Why take up so much time?

Trial Examiner EICKHOFF. The question is, Do you think Mr. Salisbury would write truthfully for this magazine?

By Mr. MERRICK:

Q. Any reason to think?

A. Have I any reason to believe that that is his article in the first place?

Q. Have you any reason to doubt that is his article?

Trial Examiner EICKHOFF. This will prove absolutely nothing. What he might think about the truthfulness of Mr. Salisbury's article won't affect the truth of the article——

Mr. MERRICK. (Interrupting.) No.

Trial Examiner EICKHOFF. (Continuing.) One way or the other.

A. I believe that Mr. Salisbury is a man of his word, but whether or not he wrote that article I don't know.

By Mr. MERRICK:

Q. If he did write this article, and if this is it as it appears here in print, "A few of the weak sisters fell for this poisonous touch of

propaganda and followed stool pigeon McDonough back to their jobs, more men followed, until only five strikers remained out,"
553 would you have any reason to doubt the correctness of that statement?

Mr. EDISES. Well, I object to his answering that unless it is indicated what particular time this article refers to. Certainly a period later than that.

Trial Examiner EICKHOFF. This is the what issue?

Mr. MERRICK. October.

Trial Examiner EICKHOFF. When did it come out?

Mr. MERRICK. I don't know; perhaps Mr. Salisbury can tell.

Trial Examiner EICKHOFF. What does that purport to effect?

Mr. MERRICK. Here is Mr. Salisbury's full report on the strike.

Mr. EDISES. That article doesn't specify what date that article refers to.

The WITNESS. Your letter here is the 6th of October and the telegram that I referred to from Mr. Salisbury regarding the number of men out on strike is also of the 6th.

Trial Examiner EICKHOFF. Does this purport to the matter you read? Does that purport to the San Francisco situation?

Mr. MERRICK. No; the New York, the M. K. office.

Trial Examiner EICKHOFF. Did that affect that at the time?

Mr. MERRICK. I can trace it.

554 Trial Examiner EICKHOFF. Suppose you look that over tonight, Mr. Merrick. We'll take that up in the morning.

We'll adjourn until 10:00 in the morning.

(Thereupon, at 4:11 o'clock p. m., the hearing in the above-entitled cause was adjourned until 10:00 o'clock a. m. Friday, December 6, 1935.)

555 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Friday, December 6, 1935.

Met, pursuant to adjournment, at 10:15 o'clock a. m.

PROCEEDINGS

Trial Examiner EICKHOFF. Are you ready to proceed, gentlemen?

Mr. EDISES. Yes, Your Honor.

Mr. MERRICK. Yes.

Mr. EDISES. Mr. Examiner, I think at this time we can fill in the blank that was left in the answer that was put in by Mr. Loudermilk yesterday.

Trial Examiner EICKHOFF. If you will show that to Mr.
556 Merrick, and he has no objection, then you can hand it to the reporter, and he can fill in the blank left in the answer yesterday.

Mr. MERRICK. I have no objection to the figure going in as such, only I think that since it covers the period October 20 to December

6 that it should appear on the record the time that this witness has been spending in court and in consultation with the attorney for the Board in the preparation of this proceeding.

I would like to be permitted to ask some questions in connection with the amount of time he has been spending on other matters during a part of the period covered by this.

Mr. EDISES. May I point out that this is the Christmas season and the busiest season in that particular line?

Trial Examiner EICKHOFF. You have no objection to having his earnings brought out?

Mr. EDISES. None at all.

ALONZO B. LOUDERMILK, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Cross examination by Mr. MERRICK:

Q. Mr. Loudermilk, you had these figures [indicating figures on adding machine paper] added up on an adding machine?

A. Yes.

557 Q. And you have recorded here all the commissions earned by you during the period October 20 to December 6?

A. Right.

Q. You have been in court in this building here every day this week, have you not—December 2, 3, 4, 5, and 6?

A. Yes.

Q. From at least 10 o'clock in the morning until 4 o'clock in the afternoon?

A. That is right.

Q. And did you spend some time previous to this week in consultation with Mr. Wagenet and with Mr. Edises, the attorney for the Board, in preparation for this hearing?

A. Only on one Sunday morning.

Q. That is the only time that you spent with them in preparing your testimony in this case?

A. That Sunday morning, and then when we filed the complaints with the Board, which was prior to October 20, I believe; I don't remember the date, but around there.

Q. The only time that you are sure that you spent in consultation with the attorney for the Board, and the Regional Director, during this period October 20 to December 6, is Sunday, December 1?

A. That is right.

Trial Examiner EICKHOFF. About how much time each day would you devote to your sales work, or the sales work which

558 resulted in these sales?

The WITNESS. Practically all day, and half the night sometimes.

By Mr. EDISES:

Q. Had you worked for the Real Silk Hosiery Corporation before, Mr. Loudermilk?

Mr. MERRICK. What is this?

Trial Examiner EICKHOFF. I don't know.

Mr. EDISES. Let me ask a question or two in connection with this.

Q. Have you worked for them before?

Mr. LIVINGSTON. We have no objection to you doing so if you will accord us the same courtesy without argument.

Mr. EDISES. You have done the same thing with this witness.

Mr. MERRICK. We have not.

Mr. LIVINGSTON. That is not a fact. What I have done is to ask questions on voir dire, which I have a legal right to do; otherwise I would address myself to you.

Speaking for myself, and I hope for Mr. Merrick, I have no objection to your asking anything you want if you don't call me down when I do the same thing.

Trial Examiner EICKHOFF. Just a minute! Just so there will be no argument about this, you may redirect the witness later on this point if you wish. This is not the time for that if there is objection.

559 Mr. LIVINGSTON. I have no objection, but we would like to be extended the same privilege.

Mr. EDISES. If Mr. Merrick will ask the question I have in mind, that will be satisfactory.

Mr. MERRICK. I am willing to extend any courtesy.

Trial Examiner EICKHOFF. Proceed to ask any question you may wish.

By Mr. EDISES:

Q. Have you worked for Real Silk Hosiery before?

Mr. LIVINGSTON. That is already in evidence.

By Mr. EDISES:

Q. Do you know which season of the year is the busiest and most lucrative in this line of activity?

A. The present season that we are in now; the Christmas buying season, the selling season.

Mr. EDISES. That is all.

By Mr. MERRICK:

Q. Mr. Loudermilk, just before the session closed yesterday afternoon we were discussing a sentence in a certain memorandum in which appears the statement that 85 out of 94 men were back to work at the M. K. office, and you said you thought that was a misstatement; isn't that so?

A. Yes.

Q. You said at that time that you had information from New York as to how many were at work on Sunday morning, October 6th. What was the information that you had, and where did you obtain it?

560 A. Well, the information was obtained from a telegram that was received on October 5th from Mr. Salisbury originally, which stated that 35 out of 45 men in the M. K. office were on strike.

Q. Aren't those operators that you are talking about now?
A. Yes.
Q. And that is the day before—Saturday?
A. That was Saturday; yes.
Q. What information did you have from Mr. Salisbury, or any one else, as to the number of men that were at work on Sunday morning, the 6th?
A. Sunday morning we received a telegram which stated that most of the men had gone back to work.
Remember, I am referring also to the fact that he stated 35 out of 45, not a possible 94 or 93.
Q. Did your information on Sunday morning give the exact number of men?
A. No; it did not.
Q. That is the only reason that you have for believing that the statement in that memorandum is incorrect?
A. The reason, as I have given, is that I was informed there were only 45 men who were eligible, or whom we had been informed about were the possibility of going on a strike.
Q. Let me repeat the question: That is the only information
561 that you had which caused you to believe that the statement in this memorandum is incorrect?
A. That telegram that I received on Saturday, you refer to?
Q. Well, the information that you have already testified to.
A. Yes.
Q. That is all you have to make you believe that was incorrect?
A. Yes.
Q. Mr. Loudermilk, have you ever been convicted of a felony?
A. No.
Q. Or of a misdemeanor?
A. No.
Mr. MERRICK. That is all.
I am surprised, Mr. Edises, that you didn't object.
Mr. EDISES. Thank you for the compliment.
The WITNESS. I answered too quickly.

Redirect examination by Mr. EDISES:

Q. Mr. Loudermilk, have you been aware of the fact that you have been under oath throughout the giving of your testimony?
Mr. LIVINGSTON. That is objected to. It is not proper redirect examination.
562 Trial Examiner EICKHOFF. Read the question, Mr. Reporter.
(The pending question was read aloud by the reporter as above recorded.)
Trial Examiner EICKHOFF. I will allow the question.
A. Yes.

By Mr. EDISES:

Q. Have you at all times during your testimony testified to the best of your recollection?

Mr. LIVINGSTON. Same objection, on the same ground.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. EDISES:

Q. You mentioned yesterday a paper which Mr. McLaughlin read at the union meeting of October 7, I believe, 6th or 7th, that was signed by a Mr. Watkins. Do you know——

Mr. MERRICK. (Interrupting.) I think that is an improper statement.

Mr. EDISES. I believe it is in the record.

Mr. MERRICK. There were some initials, not a signature.

Mr. EDISES. That is perfectly O. K. We will stipulate, then, that there were certain initials on it, the initials corresponding to the initials of Mr. Watkins. Is that correct?

Mr. MERRICK. I don't know. You can say what the initials were on the memorandum.

Trial Examiner EICKHOFF. You may amend your question.

By Mr. EDISES:

563 Q. Do you remember a paper being read at the union meeting on October 6 or 7, by Mr. McLaughlin, and referring to the situation in New York?

A. I do not. I remember the paper being discussed but not having been read.

Q. Do you know who brought that paper to the union hall?

A. No.

Mr. EDISES. That is all; no other questions.

Trial Examiner EICKHOFF. Any further examination?

Mr. MERRICK. Nothing further.

Trial Examiner EICKHOFF. Do you want to excuse Mr. Loudermilk now, or do you want him to remain on hand?

Mr. MERRICK. I know of no occasion for desiring to examine him further, but I suggest that it might be advisable, if possible, to have him, or counsel for the Board, keep informed of his whereabouts so if we do need him, we could reach him again.

Trial Examiner EICKHOFF. Will you remain on call, then, and keep in touch with the Board?

The WITNESS. I will.

Trial Examiner EICKHOFF. Then you may be excused now.

(Witness excused.)

Mr. EDISES. I will call Mr. Palmer.

GLENN E. PALMER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

564 Direct examination by Mr. EDISES:

Q. What is your name?

A. Glenn E. Palmer.

Q. And your address?

A. 1310 Turk Street.

Q. Are you married?

A. No.

Q. When did you go to work for Mackay Radio?

A. May 1930.

Q. What class operator have you been during your employment at Mackay Radio?

A. Well, at the time the classifications were made I was a Class "A" Operator.

Q. And you have been a Class "A" operator at all times since that classification was put into effect?

A. Yes.

Q. What salary did you receive when you first went to work for Mackay?

A. $150 a month.

Q. Did you receive any increases?

A. After I worked for Mackay for about five or six months, I received an increase to $160 per month, and then there was a reduction due to the depression, I think, and then I received $155; and then I believe, sometime in 1933, it was raised to $169.50;
565 and after the negotiations with Mr. Tuel it was increased to $180.

Q. Are you a member of the ARTA?

A. I am.

Q. When did you join?

A. In the early part of 1934, either February or March.

Q. Have you held any offices in ARTA?

A. I have served on the Relations Committee practically from the chapter's organization here.

Q. What is the Relations Committee—was the Relations Committee reorganized in February 1935?

A. I am not sure about the time, but it was reorganized; yes.

Q. Were you a member of the reorganized committee?

A. I was.

Q. Did you participate in the organization of Local No. 3, the point to point division of Local No. 3?

A. I did; yes.

Q. What was the nature of your participation in that organization?

A. Why, when the operators asked me what I thought of the idea, or something of that nature, why I did my best to convince them of the idea of the benefits of organization. I think I was instrumental in signing up four or five of our present members.

Q. Did you solicit——

566 Mr. MERRICK. (Interrupting.) I want to make objection to this whole line of testimony on the ground that it is utterly irrelevant. Mr. Palmer's early history has no bearing at all on any of the issues of this case, and if this testimony is offered for the purpose of showing that one of the reasons why the company discharged him was his union activities, all of his union activities should

be shown to have been known to the company at the time, or at least prior to the action complained of in this proceeding, and without such proof the testimony is wholly irrelevant and immaterial.

Mr. EDISES. Mr. Examiner, in a proceeding of this kind it is almost impossible to show every activity of his came to the attention of the company. About the best it is possible to do is to point out his most important union activities.

Trial Examiner EICKHOFF. You have shown that he was in on the organization of this Local at the beginning. Is there any reason why you could not come along now to the time when he began to have contacts, if any, with the company?

Mr. EDISES. I am coming to that.

Trial Examiner EICKHOFF. All right.

Mr. MERRICK. You understand that I object to the testimony in connection with his early history?

Trial Examiner EICKHOFF. Yes; and the objection is overruled.

567 By Mr. EDISES:

Q. You testified that you solicited members for the Local?

A. True.

Q. Now, did you engage in the first negotiations which were held with the Mackay Company?

A. Yes. At one of our earlier meetings a negotiating committee was nominated and elected.

Q. Who was on that committee?

Examination by Trial Examiner EICKHOFF:

Q. That was about when?

A. This was approximately June, I should say, 1934.

Q. 1934?

A. Yes; May or June or July.

Q. At that time the Local appointed a committee to negotiate with the Mackay Company?

A. That is true.

Q. And were you one of those appointed?

A. Yes, sir.

By Mr. EDISES:

Q. Who were the others on the committee?

Mr. MERRICK. Is this one of the meetings that we have asked to have the minutes of? These are the same questions, as I recollect, that have been asked of previous witnesses, and we have asked for the minutes; and so, if they are available, we can put in directly from the minutes, this evidence, instead of having secondary evidence on the subject.

568 Mr. EDISES. My question was this: Who were the other members of the committee? And it is possible for him to testify to that from his own knowledge.

A. Loudermilk, Rone, Bash, Salisbury, Cookson, I believe, and Orell.

Trial Examiner EICKHOFF. Did that committee have a name or any designation?

The WITNESS. I think that when it was elected that it was called the Negotiating Committee, elected for the purpose of contacting the company to make known our desires.

By Mr. EDISES:

Q. And what did this committee proceed to do?

A. A conference was arranged with the company, and we gathered in Mr. Rodman's office.

Trial Examiner EICKHOFF. About when?

The WITNESS. About June 1934.

Trial Examiner EICKHOFF. When you say "we gathered," you mean the whole committee?

The WITNESS. The whole committee; yes. An appointment was made to see Mr. Rodman, and we gathered in his office with Mr. Tuel, Captain Dodd, and I think, Mr. Jorgensen and Mr. Layman; and I believe Mr. Royden.

By Mr. EDISES:

Q. Did you present demands to the company at that time?

569 Trial Examiner EICKHOFF. Let's ask him what was said and done at the meeting, that is, the substance.

The WITNESS. The company had previously, apparently, anticipated our demands, and they had——

Mr. LIVINGSTON. (Interrupting.) We ask that his statement as to what the company apparently had done, go out.

Trial Examiner EICKHOFF. That may go out.

Mr. LIVINGSTON. May I ask counsel, through you, if this isn't the same meeting with Mr. Tuel that has been testified to before?

Mr. EDISES. I believe it is.

Mr. LIVINGSTON. Is there anything to be gained by cumulating evidence on something on which there is no disagreement?

Mr. EDISES. I take it you are not going to contest or offer any evidence in opposition to anything that has been said by any of the witnesses in regard to this meeting?

Mr. LIVINGSTON. The fact that there was a meeting at which certain demands were made in certain respect, I think it is a fact, isn't it?

Mr. MERRICK. That is my recollection of it. You are not intending to prove through this witness any material fact that has not been testified to by prior witnesses?

Mr. EDISES. I believe that Mr. Palmer's testimony will be substantially identical with that of Mr. Rone in regard to this meeting.

570 Mr. LIVINGSTON. Suppose you ask him if his testimony would be the same, and if so, go on to another subject, if that is agreeable to the Examiner.

Trial Examiner EICKHOFF. Will you stipulate that his testimony will be the same as the testimony of the previous witnesses regarding that meeting?

Mr. LIVINGSTON. As to this meeting.

Trial Examiner EICKHOFF. Yes, regarding what took place at that meeting.

Mr. LIVINGSTON. Yes, we will stipulate.

Trial Examiner EICKHOFF. That is agreeable to you?

Mr. EDISES. Yes. And I take it you will not cross examine this particular bit of testimony.

Mr. MERRICK. I have not cross examined the previous witness on that.

Mr. EDISES. Will you likewise stipulate that Mr. Palmer's testimony as to the upshot, or outcome, of these negotiations will be the same as that of the previous witnesses?

Mr. LIVINGSTON. So stipulated.

Trial Examiner EICKHOFF. You will not be cross examining this witness on these matters?

Mr. MERRICK. No.

Mr. LIVINGSTON. No.

Trial Examiner EICKHOFF. Is it so stipulated?

571 Mr. MERRICK. So stipulated.

Mr. EDISES. Will you stipulate that Mr. Palmer's testimony as to the union developments in San Francisco, up until January 1, 1935, will be the same as Mr. Rone's testimony on that point?

Mr. MERRICK. That is rather a large question.

Mr. EDISES. It isn't a large question, because, as I recall, there was not a great deal of union activity during that particular period, namely, from the time of the negotiations with Mr. Rodman and Mr. Tuel until January 1, 1935.

Mr. MERRICK. Would you mind doing this: That is, state according to your recollections, what is the substance of Mr. Rone's testimony, who testified to this.

Mr. EDISES. As I recall, the testimony was that after the negotiations with Mr. Tuel and the agreement that if NRA had not made a 40-hour week mandatory by January 1, 1935, and the company had not granted a blanket four per cent increase, ARTA could reopen further negotiations with the company; that in the latter part of 1935 the Local selected——

Mr. MERRICK. (Interrupting.) 1934.

Mr. EDISES. (Continuing.) 1934, yes, the Local selected Mr. Loudermilk to go east for the purpose of organizing a New York local; and that Mr. Loudermilk applied for leave from the company and was given a leave.

Mr. MERRICK. That part wouldn't be this witness's testi-

572 mony.

Mr. EDISES. That is about all, up to January 1, 1935. The substance of it was, Mr. Merrick, as I recall, that the union agreed not to press its demands until January 1, 1935.

Mr. MERRICK. I am willing to stipulate that if this witness were examined, he would corroborate the statements of the previous wit-

nesses as to those matters that have been mentioned by counsel for the Board.

Trial Examiner EICKHOFF. Very well.

By Mr. EDISES:

Q. Were you a member of the administrative committee which was elected in February 1935?

A. No.

Q. Did you take part in the sounding out, in the process of sounding out other locals as to their beliefs as to what should go in the proposed agreement with Mackay Radio?

A. No, I had no actual part in it, although I recommended at the meetings that that be done.

Q. I show you a mimeographed 4-page pamphlet headed, "American Radio Telegraphists' Association, 52 California Street, San Francisco, California," addressed "Dear Brother," and then reciting, making certain statements in regard to the proposed agreement with Mackay Radio, and followed on the second, third, and fourth pages by a series of questions dealing with the terms of the proposed working agreement with Mackay, and ask you if you can identify that?

573 Mr. LIVINGSTON. I think we can take your identification, Mr. Edises. If you tell us it is authentic, we will not need a witness for that.

A. (Examining pamphlet.) Yes.

Trial Examiner EICKHOFF. What is it?

The WITNESS. It is a questionnaire that was mailed out to all members, to obtain their ideas of what would be a correct adjustment of the existing wage scale and working conditions.

By Mr. EDISES:

Q. Was this mailed to non-members, too?

A. I am pretty sure that it was.

Mr. EDISES. I offer this in evidence as Board's Exhibit No. 1.

Mr. MERRICK. I have no objection to the exhibit as such. It seems, however, it is needlessly encumbering the record as it really doesn't help decide the issues in the case. The background in the preparation of the agreement presented doesn't seem necessarily a part of the evidence.

Mr. EDISES. I think this is important, Mr. Merrick, to show that every decision that was made by the ARTA was the product of a democratic process of selection, asking all members, and also non-members, as to what their wishes were an dwhat their demands were going to be, and was not the product of the work of just a few people.

Trial Examiner EICKHOFF. Will you deny that the member-
574 ship was thoroughly canvassed with reference to this proposed agreement?

Mr. MERRICK. No, sir, I will not.

Trial Examiner EICKHOFF. I would like to keep out any unnecessary matter.

Mr. EDISES. Is it your wish that this matter be excluded from the record, Mr. Examiner?

Trial Examiner EICKHOFF. They say they do not deny that the membership of ARTA was thoroughly canvassed with respect to the proposed point to point agreement.

Mr. EDISES. If they are willing to stipulate, I will withdraw this offer.

Trial Examiner EICKHOFF. May it be so stipulated?

Mr. MERRICK. It will.

Trial Examiner EICKHOFF. All right.

Mr. EDISES. Does your stipulation include that not only ARTA members, but also non-members were canvassed?

Mr. MERRICK. He already testified, to the best of his recollection, that this circular was sent to non-members, as well as members, and I think the previous witness testified to the same effect. I didn't cross examine the witness on that point.

Examination by Trial Examiner EICKHOFF:

Q. I do not recall his having said anything about non-mem-
575 bers. Was this memorandum sent to non-members?

A. It was.

Q. What non-members?

A. All radio operators in the Mackay system.

Q. All radio operators in the Mackay system, both the marine and point to point operators?

A. Well, I don't know about the marine; the marine operators were incorporated in this agreement, as I understand.

Q. As far as you know, just to the point to point operators?

A. Correct.

Mr. LIVINGSTON. You are going to put the agreement in evidence, aren't you, Mr. Edises, in its final form?

Mr. EDISES. The agreement in the final form will be put in the record; yes.

Trial Examiner EICKHOFF. Did you have any other purpose in offering that mimeographed matter?

Mr. EDISES. My primary reason for the offer of this in evidence was simply to show that the terms of the proposed agreement were submitted to every operator in every Mackay office throughout the United States, and that the final agreement represented the substance and the consensus of the opinion of all the operators, regardless of their ARTA membership on it.

Mr. MERRICK. That cannot be proved by that document in and of itself.

576 Trial Examiner EICKHOFF. That was what I was beginning to worry about. I do not know what is in this. I think we will save time and discussion by admitting it.

Mr. EDISES. Then I will submit it in evidence as Board's Exhibit No. 1.

Trial Examiner EICKHOFF. Let it speak for itself. Is there any objection?

Mr. MERRICK. No objection.

Trial Examiner EICKHOFF. It will be received as Board's Exhibit No. 1.

(The 4-page mimeographed circular referred to was received in evidence and marked "Board's Exhibit No. 1, Witness Palmer.")

Mr. MERRICK. That is, we have no objection, except on the ground of relevancy, which I have already made.

Trial Examiner EICKHOFF. It is so received.

By Mr. EDISES:

Q. What further negotiations did you participate in in connection with the Mackay Company in San Francisco? What was your next conference, if any, with the officials of the company?

A. About January or February, 1935, a vacancy in the Class "B" operators occurred in the office, and several of the operators thought that they should be raised from the Class "C" to the Class "B" vacancy, so they contacted Mr. Loudermilk and myself, and
577 requested that we arrange to see Mr. Jorgensen about that vacancy; which we did.

Mr. Martinelli, Mr. Loudermilk, and myself had a conference with Mr. Jorgensen.

Q. When?

A. About—I can only say about—I remember the meeting, but not the date—I would say about February 1935.

Q. Who were present at the conference?

A. Jorgensen, Martinelli, Loudermilk, and myself.

Q. What was said and done?

A. We asked Mr. Jorgensen if we couldn't fill this vacancy, and he showed us the error records of those men who would normally be entitled to that raise, and he said that he didn't feel that it would be possible to raise them to that vacancy at this time, but if in the future, near future, they would improve, he could make that increase.

So we said that would probably be satisfactory to the men, and we informed them of such, and the conference was ended, and everybody was happy.

Q. And did you have any further conference with any Mackay official after that?

Trial Examiner EICKHOFF. Answer that "Yes" or "No."

A. Yes. I was trying to remember.

Trial Examiner EICKHOFF. If so, when and where and under what circumstances? When was the next conference?

578 The WITNESS. I don't recall any conference up until the time Mr. Stone came out here.

By Mr. EDISES:

Q. Tell us about that conference.

A. Mr. Bash asked——

Examination by Trial Examiner EICKHOFF:

Q. When was this, approximately?

A. This conference was held in the early part of September, I believe.

Q. Where was it held?

A. In Mr. Rodman's office, 22 Battery Street.

Q. Who were those present?

A. Mr. Rodman, Mr. Russ, Mr. Stone, Mr. Rathborne, and two marine members whose names I do not know, Mr. Bash, Mr. Rone, and myself.

By Mr. EDISES:

Q. What was said and done at this conference?

Mr. LIVINGSTON. Would you mind identifying Mr. Russ at this time?

The WITNESS. Mr. Russ is the marine manager in this locality.

By Mr. EDISES:

Q. What was said and done at that conference?

A. When I joined the conference they were discussing the RMC marine agreement which had just been signed by the RMC in New York City. Mr. Stone had a copy of it on his desk on
579 Postal Telegraph blanks, and he was going through this contract picking it to pieces and belittling the whole thing as not being very much of a victory for the ARTA with regard to a closed shop, and so forth.

Examination by Trial Examiner EICKHOFF:

Q. What was RMC, that organization?

A. Radio Marine Corporation.

Q. Did you say that that agreement had been signed?

A. Had been signed by this corporation in New York. And Mackay Radio had presented a similar agreement, and Mr. Stone was attempting——

Q. (Interrupting.) You mean a similar agreement had been presented to Mackay Radio?

A. That is right. And Mr. Stone was discussing that with Mr. Rathborne and these two marine members. After that business had been finished, or not finished, whichever way you look at it, he wanted Bash, Rone, and myself to tell the members of the point to point division his side of the story at our meeting that was to be held that evening. It seems that he had knowledge of the proposition that the point to point join the marine division in presenting their agreements together.

By Mr. EDISES:

Q. When you speak of "he" to whom are you referring?

580 A. Mr. Stone.

Examination by Trial Examiner EICKHOFF:

Q. What did Mr. Stone want you to communicate to your membership? You say "his side." Do you mean what he had said about this agreement not being a good agreement?

A. No. He wanted us to impress the members with the fact that Mackay Radio was, that is, that this was the all time low in their financial history and that they were at this time undergoing some change in financial setups back east, and that the time was not ripe for an agreement at any time.

Q. Did he have any specific request that he wanted communicated to your membership?

A. He wanted us to—I believe that we had previously presented the agreement in New York through our Mr. Salisbury, and that he wanted time to get back to New York because we had mentioned a dead line, and he wanted us to give him until at least Thursday so that he could start negotiations.

By Mr. EDISES:

Q. Did you give him the time that he requested?

A. Yes, we gave him until the Monday following that Thursday to start negotiations. I think that our proposition read that if negotiations were not started and progressing satisfactorily by that Monday, that then our representative would have the authority to call us out on strike.

581 Q. Did you so inform Mr. Stone at the conference?

Trial Examiner EICKHOFF. Wait a minute! Have we left the meeting or conference?

Mr. EDISES. No.

Trial Examiner EICKHOFF. Because the action was not taken at that conference.

Mr. EDISES. I asked whether he told this to Mr. Stone at the conference.

Trial Examiner EICKHOFF. He couldn't, because it was subsequent to that that the union fixed the time limit, wasn't it?

By Mr. EDISES:

Q. Was anything said to Mr. Stone at the time of the conference about this time limit?

A. Yes, there was. The marine members were all for having action right then and there. Mr. Stone gave several reasons why that would be impossible. He said that Colonel Behn was in Europe, and to do a thing of that nature he would have to call a Board of Directors' meeting of the IT&T; and he said it was just impossible for him to do anything at that time and he would have to have several days in order to get back to New York and consult his attorneys, and one thing and another, before it would be possible for him to take any action of any kind.

By Mr. EDISES:

Q. What did you say to that?

A. Well, I agreed with him, and gave him until the following Monday. That is, we said we would propose to the membership that that agreement would be made, and we felt sure that it would.

582

Q. Was that all that was said and done at the conference?

A. That is all that I recall exactly.

Examination by Trial Examiner EICKHOFF:

Q. At the time of that conference what proposed agreements were being urged on Mackay Radio by ARTA?

A. To my own knowledge the only agreement that had been presented to them was our own, our wage and working agreement.

Q. Was that a point to point agreement?

A. Point to point.

Q. There was no marine agreement involved at that time?

A. Well, there may have been, but I didn't know of it until that night at the meeting.

Q. Well, now, when one agreement was run down, belittled, as you put it, which agreement was that?

A. The RMC agreement.

Q. That was not your point to point agreement?

A. No.

By Mr. EDISES:

Q. That was not a Mackay agreement at all, was it?

A. The RMC?

Q. Yes.

A. No.

583

Mr. MERRICK. I wonder at this point, since Colonel Behn has been mentioned with the IT&T, whether Mr. Edises will stipulate to a statement on the record as to the relation of the IT&T to the Mackay Radio and Colonel Behn to the IT&T.

Mr. EDISES. Would you care to make such a statement?

Mr. MERRICK. To clarify the record, I would like to have it appear that the Mackay Radio & Telegraph Company of California, the respondent in this action, is a subsidiary of a Massachusetts voluntary trust having the name of the Mackay Companies, over 99 per cent of whose preferred and common stock is owned by Postal Telegraph & Cable Corporation, a Maryland Corporation, of which all of the common stock is owned by International Telephone & Telegraph Corporation. Colonel Behn is the chairman of the Board of International Telephone & Telegraph Corporation, and these statements were also true at the time of which this witness spoke.

Mr. EDISES. To save possible future time, could you at this time tell us what the relation of Mackay Radio & Telegraph Company of Delaware is to Mackay Radio & Telegraph Company of——

Trial Examiner EICKHOFF. (Interrupting.) I do not want to take that up at this time because I expect theere will be a lot of testimony along these lines later.

Mr. EDISES. Very well, Mr. Examiner.

584 By Mr. EDISES:

Q. At the time you have been speaking of, Mr. Palmer, the marine division of ARTA and the point to point division had been negotiating separately, is that correct?

A. That is correct to the best of my knowledge.

Q. Did you go back to your membership with Mr. Stone's request?

A. I just thought of something else. At the meeting Mr. Stone said that in the event of trouble, why in the event that we would strike, he was almost sure that the coast circuits of Mackay Radio would be discontinued, and he gave that as a sort of an ultimatum to us, that if we called a strike, why he was pretty sure that the IT&T would find it necessary to discontinue the coast wise service.

I said to Mr. Stone, "If the coast wise service has been so much of a poor investment, why is it that the RCA are entering the coastwise service now?"

He said, "Well, they are just going to lose money on it."

Then I asked him too, I said, "Ever since I have been working for Mackay Radio I have heard the same old story time after time, 'We are losing money and not making a cent. We are running on borrowed money all the time.'"

And so I asked Mr. Stone, I says, "Who keeps your books for you? Will you let a representative of our own decide just where all this money is going?"

585 He changed the subject and didn't answer the question.

Mr. LIVINGSTON. The Government does not contend, does it, that the Mackay Radio has made any money in the last five years?

Mr. MERRICK. Or ever has.

Trial Examiner EICKHOFF. That is just a part of this conversation, which was said and done at this meeting.

By Mr. EDISES:

Q. Do you recollect anything further that was said and done at this meeting?

A. Not right now.

Q. Will you now answer the question that I put to you formerly, did you take Mr. Stone's request back to your membership?

A. We did.

Trial Examiner EICKHOFF. Here again we might enter into a stipulation regarding the testimony that these men who attended the conference went back to the meeting and made a report, and certain action was taken, and so on.

Mr. MERRICK. If the Examiner please, it seems to me that the minutes of that meeting are the best evidence of what took place. Why can't they be produced and offered?

Trial Examiner EICKHOFF. We can go through the whole thing. I thought you might want to stipulate that this witness would corroborate what the earlier witnesses have said about this next meeting of ARTA.

586 Mr. MERRICK. Why not have the primary evidence of what took place at the meeting? Is there any objection to that?

Mr. EDISES. No objection, Mr. Merrick, except this: That my understanding is that the minutes of these meetings were by no means inclusive documents.

Mr. MERRICK. I have no objection if you offer the minutes and ask this witness to look at them and ask him whether he recollects any business transacted, or statements made not recorded and that he would like to add to the official minutes. Let him testify to it if there is anything he wants to add.

Mr. EDISES. I have no objection to that.

Mr. MERRICK. It seems that is the ordinary method of proceeding along that line.

Trial Examiner EICKHOFF. We will have to take this witness over all this ground?

Mr. MERRICK. I don't know. I have never seen the minutes. Maybe hasn't much to add.

Mr. LIVINGSTON. I suggest that this might be a good time for the recess and let the witness go over the minutes.

Trial Examiner EICKHOFF. Yes; we will take a five minute recess now.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. Proceed.

587 By Mr. EDISES:

Q. I show you a mimeographed document, comprising four pages, and I will ask you if this is the official minutes of the special joint meeting of the point to point and marine locals of ARTA held at 52 California Street, San Francisco, California, September 13, 1935?

A. [Witness reading minutes referred to.]

Q. Have you read those minutes?

A. Yes.

Q. And to the best of your recollection do they contain the substance of what was said and done at that meeting?

A. They do.

Q. Have you any additions or corrections to make to those minutes from your own recollection?

A. I have not.

Q. Let me ask you about a list of names which appears on page 4. That is a typewritten or stenciled statement to the following effect:

"I, the undersigned, member of ARTA point to point division, have read the above minutes, and I take this opportunity to vote on the resolution regarding joint action."

Then "Approvals," and under that a list of names; then "Disapprovals," and under that two names; then "Silent," and under that one name.

What is the significance of those lists?

588 A. When a resolution is passed of this nature, all the members of the organization are given an opportunity to either approve of it or disapprove of it. In other words, when we have a meeting it is impossible for all the members to be present because some of them are necessarily at work, and so I think that the period is three days in which to give the members to either express their approval or disapproval of what the members did or did not do at that meeting.

Q. And this list, under "Approvals," represents the signatures of members who approved of the resolution regarding joint action subsequent to the meeting?

A. Yes.

Mr. MERRICK. Is that offered in evidence?

Mr. EDISES. I offer this in evidence as Board's Exhibit No. 2.

Trial Examiner EICKHOFF. Any objection?

Mr. LIVINGSTON. No.

Trial Examiner EICKHOFF. It may be admitted.

Mr. MERRICK. Well——

Trial Examiner EICKHOFF. Were you about to make objection?

Mr. MERRICK. I don't think so. I just noticed there is no signature here by the secretary or the recorder. This is just a typewritten statement there, "R. C. Henning, Recorder." The question was asked the witness as to whether this is the official copy of the min-

589 utes. It evidently isn't the original. Does this witness know whether Mr. Henning was the recorder at that meeting?

The WITNESS. Mr. Henning was the recorder.

Mr. MERRICK. Do you know the circumstances in connection with the preparation of this particular document here, whether that has been compared with the original minutes? Can any one certify that that is a true copy of the original minutes?

The WITNESS. I cannot say as to that. Perhaps Mr. Henning could certify to it.

Mr. MERRICK. Can the attorney for the Board make any statement on that?

Mr. EDISES. As far as I know, this is a mimeographed copy of the original minutes. Now, I don't believe that the original minutes, which I presume were taken down in longhand, are available, but I do know that the procedure was that they were immediately typed up and put into this form.

Isn't that correct, Mr. Salisbury?

Mr. SALISBURY. Yes.

Mr. MERRICK. Can you state exactly how this particular copy was prepared, and how you obtained it?

Mr. EDISES. I am informed, Mr. Merrick, that these minutes were posted at the union headquarters as the official minutes, and those signatures are the original signatures of all the members who
590 were not present at the meeting, that is, at the time of the meeting itself.

Mr. MERRICK. When you say these minutes, you mean this particular copy?

Mr. EDISES. This particular copy was the particular copy which was posted and read back to the membership at the next meeting for their approval or disapproval.

Mr. MERRICK. And the minutes of this meeting, as they are recorded in this document, were read and approved at a subsequent meeting?

Mr. EDISES. At a subsequent meeting; yes.

Mr. MERRICK. No objection.

Trial Examiner EICKHOFF. It may be admitted as Board's Exhibit No. 2.

(The minutes referred to, consisting of four pages, were received in evidence and marked "Board's Exhibit No. 2, Witness Palmer.")

By Mr. EDISES:

Q. Do you remember any further conferences, other than the ones that you have already mentioned, in which you participated with the company as a representative of ARTA?

A. There was a radio printer test being conducted between San Francisco and New York—I think it was July or August, 1935—and it was proposed by Mr. Scribner, of New York, Chief Operator of New York, that we here get a printer, borrow a printer girl from the Postal Telegraph Company to run this end of the test.

591 Q. By "we" whom do you mean?

A. The H. B. Office in San Francisco. The fellows, rather, all the operators, were highly incensed at this and asked Mr. Salisbury and myself to contact Mr. Jorgensen and see if he wouldn't appoint one of us to run this end of the test, because, after all, we had experienced printer operators in our own gang.

Q. Did you have a conference with officials in regard to that?

A. We did.

Q. Will you fix the time and place of that conference and who was present?

A. We merely asked Mr. Jorgensen if it was necessary to do that, at first, and he said it was. And so on the morning in question——

Q. (Interrupting.) Are you describing now the conference that was held?

A. No.

Q. The conference that was held with company officials?

A. No. On the morning in question, that this girl was to come down to the H. B. operating room and conduct this test, all the men working at that time told us that if she came down all the radio

operators would walk out, and that we were to go in and tell Mr. Rodman that, which we did.

We went into Mr. Rodman's office, and he called in Captain Dodd, and Mr. Jorgensen and Mr. Royden.

592 Q. What was the date of this conference?

A. I can't say exactly. I think it was in August.

Q. August of what year?

A. 1935.

Q. 1935?

A. Yes.

Q. Where was the conference held?

A. In Mr. Rodman's office.

Q. Who was present at the conference?

A. Salisbury and myself; Mr. Rodman, Captain Dodd, Mr. Jorgensen, and Mr. Royden.

Q. What was said and done at the conference?

A. We told Mr. Rodman what the fellows had told us, and——

Mr. LIVINGSTON. (Interrupting.) Is this about the girl students?

Mr. EDISES. A printer girl; yes.

Mr. LIVINGSTON. Do we have to go through all that again?

Mr. EDISES. This was not mentioned before.

Mr. LIVINGSTON. This is a new one?

Mr. EDISES. A new one.

Mr. LIVINGSTON. Good!

By Mr. EDISES:

Q. Go ahead, Mr. Palmer.

A. We told Mr. Rodman what the fellows had asked us to

593 tell him, and he said he had no authority to keep her out; that however he would phone Tuel in New York—I believe it must have happened before, must have happened in July or June—anyway, he phoned Mr. Tuel, and Mr. Tuel apparently told him to keep the girl out of the operating room.

So that terminated that.

Trial Examiner EICKHOFF. The girl didn't come in?

The WITNESS. No; the girl didn't come in.

By Mr. EDISES:

Q. That was all that was said and done at that conference?

A. That is all that I remember; yes.

Q. Do you remember any further conferences that you had with any company officials? I am speaking of the period prior to the strike.

A. No.

Q. Were you present at union headquarters on Friday, October 4, 1935?

A. I was.

Q. Was a meeting of the Local held at that time?

A. When I arrived at the union hall, I was informed by Mr. Bash that we were to go on strike at midnight. I think there was a meeting in progress when I arrived, I believe.

Q. Do you remember what time you arrived?

A. Not definitely; no.

Q. Approximately.

A. Approximately 8 o'clock.

594 P. M.?

A. 8:30, perhaps; p. m., yes.

Q. What was said and done at that meeting?

Mr. LIVINGSTON. Can't we go through the same procedure, please?

Trial Examiner EICKHOFF. What procedure do you refer to?

Mr. LIVINGSTON. The minutes—if they are here, all right, let us have them; if not, all right. If they are here, let him tell us what is wrong with them.

Trial Examiner EICKHOFF. Have you the minutes of that meeting?

Mr. MERRICK. You stated October 5th, I think. It was October 4th.

Mr. EDISES. Did I say October 5th? I intended to say October 4th.

By Mr. EDISES:

Q. I show you a 2-page document headed "Minutes, twenty-second meeting of the San Francisco Point to Point Local of the ARTA, held at 52 California Street, San Francisco, California, October 4, 1935, at 8:27 p. m.," and ask you if you can identify these as the official minutes of that meeting?

A. [Examining minutes referred to.] Yes.

Mr. EDISES. I am informed that these minutes were type-
595 written by the recorder, Mr. Heming, from his shorthand notes and that this is the official copy which was subjected to the usual procedure of posting and then subsequent reading at the following meeting.

Is that correct, Mr. Salisbury?

Mr. SALISBURY. Yes.

Mr. MERRICK. They were approved at a subsequent meeting as they appear in that document?

Mr. SALISBURY. That is right.

Mr. EDISES. Is that correct, Mr. Salisbury?

Mr. SALISBURY. Yes.

Mr. EDISES. Will you stipulate these may be introduced?

Mr. MERRICK. You offer them.

Mr. EDISES. I offer them in evidence as the official minutes of the October 4th meeting. Any objection?

Mr. MERRICK. No objection.

Trial Examiner EICKHOFF. They may be admitted as Government Exhibit No. 3.

(The minutes of the meeting of October 4, 1935, consisting of two pages, were received in evidence and marked "Board's Exhibit No. 3, Witness Palmer.")

By Mr. EDISES:

Q. I now ask you whether the contents of this document represent the substance of what took place at the meeting of October 4, 1935, to the best of your recollection?

A. Yes.

596 Q. Have you at this time any additions, amendments, or corrections to make to include matters that you remember which were not recorded in the minutes?

A. I cannot think of anything that is not incorporated in the minutes.

Q. Did you see Mr. Hatch present at that meeting?

Mr. LIVINGSTON. Objected to as cross examination of his own witness.

Mr. EDISES. I submit——

Mr. LIVINGSTON (Interrupting.) There was a roll call and he said it is right.

Mr. EDISES. I submit I am entitled to ask specifically as to certain things. It has been testified that the minutes are not complete, only sketchy account of what took place.

Trial Examiner EICKHOFF. I don't recall any such testimony.

Mr. EDISES. May I put that question to the witness, then?

Trial Examiner EICKHOFF. Yes; I will allow that question.

Mr. LIVINGSTON. Subject to our objection.

Trial Examiner EICKHOFF. Yes.

By Mr. EDISES:

Q. Mr. Palmer, do the minutes contain everything that was said and done at the meeting?

597 Mr. LIVINGSTON. That is objected to as having been asked and answered.

Trial Examiner EICKHOFF. Sustained.

Refer particularly to the persons shown as being present, and ask if he has any corrections to make.

By Mr. EDISES:

Q. I call your attention to the roll call of persons present at that meeting and ask you if you recall any other members as having been present at that time who are not included in this list?

Mr. LIVINGSTON. Objected to as having been asked and answered, and as cross examination.

Trial Examiner EICKHOFF. Overruled.

A. I cannot think of any one now that was at the meeting and not listed here, although there were members who came in all the time, and after the meeting had adjourned.

By Mr. EDISES:

Q. How long did the meeting last?

A. It was a very short meeting.

Mr. MERRICK. I think it appears in the minutes.

By Mr. EDISES:

Q. According to the minutes, the meeting adjourned at 9:35 p. m. What happened after the adjournment of the meeting?

A. We all stayed around the union hall and talked the situation over. The strike committee—that is, three of the strike committee—called on Mr. Rodman and we wanted to know what the strike——

598 Mr. MERRICK. (Interrupting.) Fix the time and the place.

By Mr. EDISES:

Q. State the time and place of your conference with Mr. Rodman.

A. It was approximately between 11 and 11:30, I presume, p. m.

Q. Where?

A. In Mr. Rodman's office, 22 Battery Street.

Examination by Trial Examiner EICKHOFF:

Q. On the night of this meeting?

A. After the meeting; yes.

Q. Who composed your group?

A. Mr, Bash, Mr. Stockton, and myself.

Q. And Mr. Rodman. Anybody else?

A. No one else.

Q. What took place at that meeting?

A. Mr. Rodman wanted to know why we were going out on strike, and we told him that Mr. Stone had, according to Mr. Salisbury, stopped negotiating with them there and had delivered his ultimatum that afternoon, and the substance of his offer was to increase——

Q. (Interrupting.) Whose offer?

A. Mr. Stone's offer—was to increase the M. K. office salaries and to grant the Palo Alto operators an increase, too.

At that point Mr. Rodman interjected $165 a month, so
599 we knew that he was fully aware of what was going on and so his questioning, we knew, was immaterial.

By Mr. EDISES:

Q. Was anything said at that time about striking, other than what you have just indicated?

A. Mr. Rodman said, "You leaders are taking an awful responsibility on yourselves."

I told Mr. Rodman, "There are no leaders in our organization. It is a rank and file organization. We are merely carrying out the members' wishes and desires."

Q. What else was said at that meeting, if you remember?

A. That was all I remember at that meeting.

Q. What did you do then?

A. We went into the operating room and talked to Mr. McKercher.

Q. Who is he?

A. He was the supervisor on watch at that time—and Mr. Rone. We asked Mr. McKercher if he was going to come out with us, and he said that he was; and Rone said the same thing, that he was coming out.

Q. Anything else said?

A. That is all.

Q. Well, what was done then? What did you do then?

A. I had agreed to take the watch at the union hall from midnight until 8 in the morning.

Q. What watch are you referring to?

600 A. We established a watch there to answer the telephone and receive telegrams, and established a picket line to see that it was kept working, and that is all.

Q. Who were the strike captains?

Mr. MERRICK. Aren't they in the minutes?

A. They are in the minutes.

Mr. LIVINGSTON. At the bottom of the page.

By Mr. EDISES:

Q. In the minutes of October 4th there is a reference to the strike committee. Does that refer to the strike captains?

A. I don't quite recall. It is my opinion that at that meeting we elected a strike committee who in turn were to appoint strike captains; that may or may not be correct.

Q. Do you know if those strike captains were appointed?

A. No. Subsequently my picket duty was from 10 in the morning to noon, and all the union meetings were held at 10 o'clock, so I don't exactly know what was done, except I was informed that I was a strike captain.

Q. Who informed you?

A. I don't remember. I believe it was Brother Bash.

Q. Did you go on that watch then?

A. I kept that watch until about 2:30, and there were several of our members still there; Mr. Beebee was one.

Trial Examiner EICKHOFF. Just a minute! Did anything happen during this watch that you want to bring out?

601 By Mr. EDISES:

Q. Do you recollect anything happening during that period, Mr. Palmer, anything particularly?

Trial Examiner EICKHOFF. That is a pretty general question.

A. Well, I don't recall anything happening, except a picket line was formed in front of the Mackey Radio operating building, of about four or five men, and then there were several of us over at the union hall at that time.

By Mr. EDISES:

Q. How many men walked out of the H. B. office?

A. At midnight?

Q. Yes; midnight, October 4th.

A. All of them, I believe. I think Mr. Jorgensen was alone in the operating room at that time; that is, everyone walked out except the chief operator, who was there.

Q. Did you serve on the picket lines?

A. I did.

Q. Do you recall having spoken to any official of the company between the time of the walkout and the morning of Monday, October 7th?

A. I saw Mr. Dewey.

Q. Who was Mr. Dewey?

A. He is the commercial manager of Mackay Radio here.

Q. When and where did you see him?

A. As he was entering and leaving the building.

602 Q. Did you speak to him?

A. Yes.

Trial Examiner EICKHOFF. When?

The WITNESS. I can't say exactly when. It was during my watch between 10 in the morning until noon on a couple of days.

Trial Examiner EICKHOFF. Two days following the strike?

The WITNESS. I would say the day after the strike, Saturday, and then I think I saw him again on Sunday.

By Mr. EDISES:

Q. Did you speak to him the first time that you mentioned?

A. I said, "Hello." I said, "How are things going?" and he said "All right"—just general conversation.

Q. And the second time did you speak to him?

A. Same thing.

Trial Examiner EICKHOFF. There is no use bringing out testimony like that.

By Mr. EDISES:

Q. Were you present Monday morning, October 7th, at the regular 10 o'clock meeting held at the union hall?

A. No; I was on picket duty.

Q. Were you present at the union hall at any time Monday, October 7th?

A. To the best of my recollection, before and after my picket tour; yes.

603 Trial Examiner EICKHOFF. I am going to adjourn now until 2 o'clock. I would like to have you go over the evidence with the witness before 2 o'clock, Mr. Edises.

(Thereupon, at 11:55 o'clock a. m., a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2:10 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner EICKHOFF. You may proceed.

GLENN E. PALMER, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Direct examination by Mr. EDISES:

Q. What time did you leave the union hall Monday, October 7th, Mr. Palmer?

A. To the best of my recollection, I left the union hall early in the afternoon..

Q. Where did you go then?

A. I went home.

Q. Did anyone tell you about a meeting to be held at the Hotel Bellevue?

A. They did not.

Q. Did you hear about that meeting?

A. The next——

Mr. MERRICK. (Interrupting.) He has answered that question.

604 By Mr. EDISES:

Q. Did you hear about that meeting?

A. The next thing I heard I was wakened by telephone early Tuesday morning, October 8th, and I was phoned by Mr. Bartlett, who said that the strike was over and to report down to the Hotel Bellevue.

Q. Did you go to the Bellevue?

A. I did.

Trial Examiner EICKHOFF. Who was this man?

The WITNESS. Mr. Bartlett. He was a radio operator employed by the company.

Trial Examiner EICKHOFF. What is his name?

The WITNESS. Bartlett—B-a-r-t-l-e-t-t.

Trial Examiner EICKHOFF. I thought you said Barrett.

The WITNESS. No.

By Mr. EDISES:

Q. Did Mr. Bartlett call to you?

A. He did.

Q. And you went immediately to the Bellevue Hotel?

A. Yes.

Q. And what time did you get there?

A. It is only a guess; probably 2 o'clock in the morning.

Q. What did you find?

A. There was Mr. Loudermilk, Mr. Jorgensen, and a couple of other fellows sitting in the room talking when I entered the room.

Q. What room?

605 A. Pardon?

Q. Do you know the number of the room?

A. No; I do not.

Q. What was said and done after you got there?

A. Why, I asked what it was all about.

Trial Examiner EICKHOFF. Whom did you ask?

The WITNESS. The fellows present. I said, "What is the reason for the meeting?" and I says, "Is this a back-to-work movement, or what?" and they said——

By Mr. EDISES:

Q. Who said?

A. Loudermilk told me the meeting wasn't an official ARTA meeting and that Hatch was getting some of the men together to hold this meeting.

Q. Who was present at that meeting?

A. You mean all of the 36?

Q. Well, tell me as many names as you can remember that were present at that meeting.

A. There was Sam York, Jorgensen, Loudermilk, Buckley, Eddie Barlow, Mr. Bartlett, Dwyer, Chambers.

Q. Any company officials?

A. Jorgensen.

Q. About how many men were present?

A. Thirty-six present all together.

Q. Did anybody call the meeting to order?

A. After they were apparently all there, Mr. Hatch said,
606 "This is an H. B. operators' meeting called to determine whether or not the men wish to go back to work." He finally said, "Well, let's get the meeting going."

No one in the room had much to say, as I recall, and there wasn't any conversation there.

And he said, "Burtz, will you act as chairman?"

Burtz declined to act as chairman and then Hatch——

Q. (Interrupting.) Did he give any reason for not wanting to act as chairman?

A. No; he did not.

Hatch says then to McLaughlin, "Will you act as chairman?"

McLaughlin said, "I will try to," so he got up and said that he was inexperienced in that sort of thing, but that he didn't know why the strike was called and had no knowledge of it, and conversation along those lines.

Hatch said, "Well, let's take a vote."

There was some discussion by Hatch, McLaughlin, and Burtz as to what should be a majority, and Hatch said, "Well, I think"—rather, he asked the question, "Shall it be a simple majority, or shall it be a two-thirds majority or three-fourths majority, or what?"

Q. Anything said about what the vote was to be for?

A. Yes. The vote was to be whether or not the men were to return to work.

607 Now, previous to this Mr. Loudermilk had told me that there were to be a list of men who would not be taken back to work, and I think that either McLaughlin or Hatch announced that fact.

And so Hatch said, "Shall we permit these eleven men the right to vote or not?" There was very little discussion along that line. Finally, they decided they would permit the eleven men, that is, those who were there of the eleven, to have the right to vote.

Q. Where was Mr. Jorgensen during the period that you are now discussing?

A. He may have been in that room, or he may have been in the adjoining room; I don't recall.

Q. Was the door open to the adjoining room at all times?

A. It was.

Q. Well, now, was anything said about the method of voting?

Trial Examiner EICKHOFF. Rather let him continue his testimony along those lines.

A. There was discussion there as to whether the vote would be oral or written, and it was finally decided to have a written vote.

Trial Examiner EICKHOFF. What was decided about the majority?

The WITNESS. The majority was decided to be a two-thirds majority.

Trial Examiner EICKHOFF. Two-thirds?

The WITNESS. Two-thirds; yes. I think Mr. Loudermilk
608 was mistaken yesterday about that. That is my recollection that it was a two-thirds majority vote.

By Mr. EDISES:

Q. Go ahead, Mr. Palmer.

A. And then the question was raised as to whether or not they would permit those members, the eleven men, to vote.

Perhaps I am getting a little ahead of myself.

Mr. McLaughlin asked Mr. Jorgensen to read off the list of names of those men who were not to return to work, which he did.

Trial Examiner EICKHOFF. Do you recall what names he read off?

The WITNESS. I am pretty sure I know them all. He read off Loudermilk, Rone, Bash, Salisbury, myself, York, Humphries, Westcott, Patterson, Dwyer—I believe there is one other name.

By Mr. EDISES:

Q. Hardin?

A. Yes, Hardin.

Q. What was said and done?

A. That was quite a surprise. In any event, little slips of paper were passed around and the men wrote "Yes," or "No," or returned their votes blank; then they were put into a hat and I believe, Mr. Martinelli counted the votes and he announced the count as 22 to return to work and six "noes," and eight blanks, I believe.

Q. What were the blanks supposed to represent?

609 Mr. MERRICK. I think that has been sufficiently explained.

Trial Examiner EICKHOFF. Isn't that obvious?

Mr. EDISES. I would like to bring out the question of whose suggestion that was.

By Mr. EDISES:

Q. Who suggested that you include the blanks as one of the ways of voting, do you remember?

A. Mr. Hatch as I remember it; yes.

Q. Well, then what was done?

A. After the result of the vote was announced, Loudermilk said, "Why in the world have you Sam York on the list?"

Then Mr. Jorgensen said, "Why I have had very little to do with the making up of this list and I am just following orders."

Then he went into the bedroom and laid back on the bed and Hatch went over to him and said, "What is the matter, old man, are you tired?" And then he said, "I will get you a pill," he said; so he got him an aspirin or some pill, and gave it to him.

Q. Did you hear Mr. Loudermilk having a discussion with Mr. Jorgensen in the other room, in one of the rooms, by themselves, at any time? Did you overhear any of that conversation?

A. No.

Q. What did you do then? What happened after the vote
610 had been counted?

A. Well, Jorgensen made the statement, he said, "Of course, these eleven men can make out applications for reinstatement and I will pass on them and forward them to Mr. Stone, who has instructed me to do that."

Mr. Loudermilk and myself left the meeting.

Q. Then did you hear anything said about going back to work after the vote?

A. Oh, yes. As soon as the vote was counted, and the result announced, Hatch said, "Hooray! Let's all go down and get our names on the pay roll."

Q. Did the men all leave at that time?

A. We left before they all left.

Q. Did you have any interviews with any of the company officials that day?

A. Yes.

Q. When?

A. That Tuesday evening, November 8th.

Q. Where did you have this interview, and with whom?

A. We went to see Rodman to find out what it was all about.

Q. Who was with you?

A. Mr. Loudermilk and myself went to see Rodman to find out what it was all about. We asked his secretary if we could see him and she told us he could not see us; that he was too busy. Then we
611 went to see Mr. Jorgensen and he gave us applications to fill out.

Examination by Trial Examiner EICKHOFF:

Q. Was this before or after the Bellevue meeting?

A. After the Bellevue meeting; that same day later in the afternoon. The Bellevue Hotel meeting was three or four o'clock in the morning.

Q. Yes.

A. That afternoon we went to call on Mr. Rodman.

Q. And you weren't able to see him?

A. Not the first time. However, we came back later, around 5:30 in the evening, or 6:00, and, as I remember, he was on his way home and he opened the door and we went into the office and asked if we could have a few minutes, and he said, "All right."

Q. Who was with you?

A. Loudermilk.

Q. And what was said and done?

A. We wanted to know why we weren't permitted to have our jobs back and he said that he didn't have anything to do with it, that he was merely to accept our applications for reinstatement and forward them to Mr. Stone in New York.

And when we went in to see Mr. Jorgensen—when I say "we" I refer to Loudermilk and myself—we seen Humphries and Sam
612 York and Patterson were working. We said, "How does this happen?"

He said, "Well, they came down here after the meeting at the Hotel Bellevue and went to work."

And I said, "Why wasn't that opportunity given us?" He said, "I don't know; I thought it had been."

By Mr. EDISES:

Q. Anything further said at that meeting?

A. Then Mr. Loudermilk said, "Why have you discriminated against us?"

Mr. Rodman said, "You are the ring leader of the whole thing and" he said, "I think you would be better off if you had been in another organization."

Q. Did he say why?

A. He said because ARTA was nothing but a hotbed of communists, reds, and radicals. We said we didn't think that was so; that it had never come to our attention that way.

He said, "I can prove it," and he went and got a slip of paper out of his drawer and said, "I have a report here from a private agency to the effect that your leaders are all communistic agitators and radicals and are tied up with the water front."

Mr. EDISES. Do you have that report just referred to by the witness?

Mr. MERRICK. I couldn't identify it from that description.

Mr. EDISES. Do you have any detective reports, regard-
613 less of when they were prepared, which deal with the labor situation immediately preceding and during the strike and the events leading up to the strike?

Mr. MERRICK. Any what?

Mr. EDISES. Any reports, like private operatives, or detectives, or detective agencies, in regard to the union or union members, which have to do with the events leading up to the strike, or dealing with the strike situation itself?

Mr. MERRICK. No.

Mr. EDISES. Have you any reports of detective agencies dealing with these matters at all?

Mr. MERRICK. Do you want to put me on the stand?

Mr. EDISES. You certainly ought to know what materials you have.

Mr. MERRICK. You write out anything you want and, if I understand what it is, I will produce it if I can find anything of the kind.

I know nothing about anything of the description that you are giving me now.

Mr. EDISES. Have you any reports describing these men's past histories and activities, and so on?

Mr. MERRICK. Reports from whom?

Mr. EDISES. From any detective agencies?

Mr. MERRICK. No.

Mr. EDISES. Or any private operatives?

Mr. MERRICK. Other than those referred to yesterday?

614 Mr. EDISES. What are those?

Mr. MERRICK. Are we going through this again, what we went over yesterday?

Mr. EDISES. I don't believe you said what they were. If they have a bearing on this situation I think we are entitled to have them.

Mr. MERRICK. You asked to have them produced yesterday and I told you the circumstances under which I would produce them.

Mr. EDISES. Will you restate it?

Mr. MERRICK. If they are called for, and you offered them in evidence, I would produce them.

Mr. EDISES. Am I obliged to state whether or not I will offer them in evidence before I have had a chance to look at them and examine them?

Trial Examiner EICKHOFF. I don't know that you can go fishing for evidence that way.

Mr. EDISES. I don't want to fish.

Trial Examiner EICKHOFF. If there is something, for example, this paper that was mentioned, if you demand that and they have it, I think they should produce it; but I don't know as you can ask them what they have.

Mr. EDISES. I do ask that that paper just referred to be furnished.

Mr. MERRICK. I don't know anything about it.

615 Mr. EDISES. Will you make an effort to discover——

Mr. MERRICK. (Interrupting.) Describe it. I can not locate any such document from such a description.

By Mr. EDISES:

Q. Did you get a chance to see it closely?

A. I did not. Mr. Rodman merely read from it.

Q. Was it a typewritten document?

A. I believe it was typewritten; yes.

Q. Was it bulky?

A. No; a single sheet of paper.

Mr. EDISES. Do you mind asking Mr. Rodman if he remembers that sheet of paper that the witness referred to?

Mr. MERRICK. I have talked to Mr. Rodman already.

Mr. EDISES. What did he say?

Mr. MERRICK. If you want to put Mr. Rodman on the stand and ask him about it and have him produce it, that is your privilege.

Mr. EDISES. I am just trying to see——

Trial Examiner EICKHOFF. (Interrupting.) Can you produce that? Does Mr. Rodman or you know what piece of paper is referred to?

Mr. MERRICK. I have never heard of it before. Mr. Rodman says he thinks he knows what it was he had.

Trial Examiner EICKHOFF. Can it be produced?

Mr. MERRICK. He things it can be.

Trial Examiner EICKHOFF. Do you want it produced?

616 Mr. EDISES. I do.

Trial Examiner EICKHOFF. Will you produce it?

Mr. MERRICK. It is not here. He will look when he gets back to his office.

Trial Examiner EICKHOFF. At a later time if you can find it, will you produce it?

Mr. MERRICK. Under what conditions is that to be produced? Is it to be offered in evidence?

Mr. EDISES. Do I have to state at this time whether it will be offered in evidence, Mr. Examiner?

Trial Examiner EICKHOFF. I think that you might be obligated to introduce it, inasmuch as you are calling for evidence.

Mr. MERRICK. That is the risk he takes. If he calls for opposing counsel to produce a document, or calls for a document on subpoena, it can be produced only on the basis that the person who calls for it is offering it in evidence.

Mr. EDISES. I am willing to take that risk. In other words, if the document is relevant and if it militates against the men I am willing to have it go in evidence.

Mr. MERRICK. Why don't you state so?

Mr. EDISES. The point is, if it relevant.

Trial Examiner EICKHOFF. Your question is answered. He will offer it in evidence. Will you produce it if you can?

Mr. MERRICK. I will.

617 By Mr. EDISES:

Q. Have you related the whole of your conversation with Mr. Rodman, Mr. Palmer?

A. We asked Mr. Rodman again why it was that we could not have our jobs back, as well as the rest of the men, and he said that was all he could do; that is, all he could do would be to pass on our applications and forward them to Mr. Stone in New York, and nothing could be done until then.

Q. Did he state he would accept your applications for work?

A. He did.

Q. Now, you mentioned an interview that you had with Mr. Jorgensen. When did you have that interview?

A. After we terminated our interview with Mr. Rodman he advised us to talk to Captain Dodd, and we went into Captain Dodd's office in which Mr. Jorgensen was present, and then there was the same discussion over again, practically.

We asked him why we couldn't have our jobs back, and he told us the matter was out of their hands and would have to go through this

formality of requesting reinstatement, through Mr. Jorgensen and Captain Dodd and Mr. Rodman, and then it would be sent to Mr. York for Mr. Stone's final decision.

Q. Did you ask Captain Dodd why you had not been re-employed?

A. I did.

Q. And what did he say to that?

A. He said that they had a full complement of operators and there was no room for us.

618 Q. Did he state there had been any other particular basis on which these names had been selected?

A. We asked——

Mr. MERRICK. (Interrupting.) That is objected to as leading.

Trial Examiner EICKHOFF. Mr. Reporter, read the question.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. MERRICK. He hasn't shown that Captain Dodd had any connection whatsoever with the preparation of the list. The witness already testified that Mr. Jorgensen told him it was prepared by higher authorities.

Mr. EDISES. You do not deny that Captain Dodd is an official of the company?

Trial Examiner EICKHOFF. Objection sustained. You may reframe the question if you wish.

By Mr. EDISES:

Q. Do you remember anything further that Captain Dodd said during that interview?

Trial Examiner EICKHOFF. Concerning your re-employment.

By Mr. EDISES:

Q. Concerning your re-employment.

A. All that Captain Dodd had to say was that the matter was out of his hands and all he could do would be to pass on our application.

Q. And did you then re-apply for work?

619 A. We did.

Q. When?

A. I filled out an application that evening, and the following day I signed a prepared reinstatement paper at Mr. Jorgensen's request.

Q. Is this the application that you signed?

A. [Witness examining application.] Yes. This [indicating] wasn't on it at the time I signed it; the lower part.

Q. And none of the material, typewritten material underneath your signature was present on the application at the time you signed it?

A. No.

Mr. EDISES. I offer it in evidence.

Mr. MERRICK. Since we put in the previous ones with the full file, I would like to have it all go in on this one, subject to the condition mentioned by the Examiner yesterday, that we subsequently have

these other sheets properly identified and proved through competent testimony.

Mr. EDISES. Then I offer at this time a document entitled "Personal History Record," and a typewritten sheet from G. E. Palmer to Mr. A. C. Jorgensen, traffic manager, H. B., dated October 8th, 1935, at San Francisco, California:

"Confirming my verbal application to you about 9 p. m., October 8th, please reinstate me in the H. B. operating force in my former position as Class A operator.

620 "My personal history record is attached."

It is signed "Glen E. Palmer."

There is some typewritten material underneath the signature.

And also a document entitled "Inter-Office Memorandum." to Mr. Ellery W. Stone from H. L. Rodman, from E. H. Dodd, dated October 12, 1935, signed "E. H. Dodd."

Trial Examiner EICKHOFF. Referring to what?

Mr. EDISES: Stating:

"Forwarded.

"In view of the fact that no vacancies now exist in the H. B. Operating force, it is not recommended that Mr. Palmer be employed as requested by him.

"It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the H. B. operating room."

Also a document headed "Inter-office Memorandum" and this is to Mr. Ellery W. Stone, from H. L. Rodman. Subject, G. E. Palmer, application for re-employment; dated October 14, 1935, reading as follows:

"Forwarded.

"In view of the fact that no vacancies now exist in the H. B. operating force, it is not recommended that Mr. Palmer be employed as requested by him.

621 "It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the H. B. operating room.

"Enclosure."

And then "H. L. R."

And then, underneath that, "October 26th, 1935, to H. L. Rodman, from Ellery W. Stone:

"Returned.

"Your recommendation is approved and there is no objection to favorable consideration being given this application when a vacancy occurs at San Francisco."

Then there are the initials "E. W. S." Then there is stamped, "Received October 28, 1935, Mackay Radio & Telegraph Company," then the initials, "E. H. D., 10/29/35."

Trial Examiner EICKHOFF. Is that offered in evidence?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. What part of it do you consider proved or unproved?

Mr. EDISES. I don't quite follow you.

Trial Examiner EICKHOFF. This witness can only prove a part of that exhibit.

Mr. MERRICK. I have no objection to its going in anyway.

Mr. EDISES. I think it ought to be one exhibit, inasmuch as it is all pertaining to one subject matter, namely, this man's re-employment.

622 Trial Examiner EICKHOFF. I understand that, but nobody has——

Mr. EDISES. He can prove the personal history record and the statement over his signature, and the rest, I dare say, Mr. Merrick will connect up or use later.

Trial Examiner EICKHOFF. Somebody will have to prove it before I will accept it as an exhibit.

Mr. MERRICK. That is what I stated originally, subject to the same condition that you provided in respect to the application for re-employment by Mr. Loudermilk.

Trial Examiner EICKHOFF. I want the record to show what portions are yet to be proved.

Mr. MERRICK. The third and fourth sheets and the memorandum on the lower half of the second sheet.

Mr. EDISES. Those which are entitled "Inter-office Memorandum" and the lower half of the second sheet.

Trial Examiner EICKHOFF. It may be admitted, with that understanding, as Board's Exhibit No. 4.

(The documents referred to were received in evidence and marked Board's Exhibit No. 4, Witness Palmer.)

By Mr. EDISES:

Q. Did you follow up your re-employment application in any way?

A. Yes; I phoned the office every day or so to find out what was being done about it. I phoned Captain Dodd, and, after several days, he told me that he had forwarded it to Mr. Rodman, and
623 then a couple of weeks later I was at the office and Mr. Jorgensen told me it had been returned approved.

I said, "What does that mean?"

He said, "Well, if we have a vacancy we will keep you in mind."

I said, "When do you expect a vacancy?"

He said, "Well, there probably won't be anything doing until next summer."

Q. And that is all that was said?

A. That is all.

Mr. EDISES. That is all. Just a moment!

By Mr. EDISES:

Q. Do you want your job back?

A. I do.

Q. Will you take it if it is offered to you?

A. I will.

Mr. EDISES. That is all.

Cross-examination by Mr. MERRICK:

Q. Did you ever serve on any of the committees—You testified that you served on committees of your union that had negotiations with the company, did you not?

A. Yes.

Q. Did you ever have any meetings with representatives of the company during the hours of your trick?

A. To the best of my knowledge, no.

Q. What were your hours on September 13th; do you remember?

624 A. Eight until four.

Q. What time did you meet with Mr. Stone?

A. I am not positive, but I believe it was after four o'clock; it may have been before, but I am not sure.

Q. Have you ever had your pay decreased by reason of any time that you spent in any meetings?

A. No.

Trial Examiner EICKHOFF. What do you mean by "any meetings?"

Mr. MERRICK. Any meetings, either of his union, or meetings with the company, or otherwise. His pay has never been docked for any absences for the purpose of attending a meeting.

Trial Examiner EICKHOFF. Do you ever recall leaving your work during your trick to attend a meeting?

The WITNESS. I don't recall any such time; no.

By Mr. MERRICK:

Q. At this conference on September 13th with Mr. Stone you said that he belittled and picked to pieces the agreement that had been signed between ARTA and RCA marine, didn't you?

A. I did.

Q. And said that he requested the union to delay pressing the Mackay Radio too hard for the signature of an agreement calling for increases in salaries; is that right?

A. How is that?

625 Q. He asked you not to press for increases of salaries at that time, you said, and said something about waiting until after the first of the year?

A. I don't recall him saying anything about waiting until after the first of the year. What he said was, "You have caught me with my pants down," and, he said, "I am out here on the coast and you are presenting an agreement back in New York."

Q. Did he say he had never seen the agreement?

A. I don't remember.

Q. You had no copy of the agreement with you at the time of that meeting, the point to point agreement?

A. No; the point to point agreement itself wasn't discussed very much. They were discussing the marine agreement.

Q. Do you remember Mr. Stone telling you anything about the bankruptcy of the Postal Telegraph and Cable Corporation?

A. Yes; he talked some—he mentioned that; yes.

Q. Do you remember his saying anything to the effect that if you persisted in trying to get these salaries increased any further that it might result in Mackay Radio Company itself going into bankruptcy, and then you fellows would have to deal with a judge and a trustee in bankruptcy and not the officials of the company?

A. I don't remember exactly that. I believe something to that effect was discussed there, but I don't recall it.

626 Q. Did that argument have any weight with you?

Mr. EDISES. I object to that.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Have you any information as to the financial condition of the Mackay Radio?

Mr. EDISES. Same objection.

Trial Examiner EICHOFF. Sustained.

Mr. MERRICK. I submit that is proper cross examination, since, on direct examination, he stated that Mr. Stone had referred to the financial condition of the company, but when he asked him about the balance sheet or letting someone else examine the books, he changed the subject. You still refuse me, or permit me, to examine him or question him as to his knowledge of the financial condition of the company?

Trial Examiner EICKHOFF. There might have been a number of things mentioned on direct which were part of a conversation. The witness' testimony only went to that, I think.

Mr. MERRICK. This testimony was, as I understand it, put in for the purpose of discrediting the good faith of the operating head of the company, and on that basis I would like the privilege of cross examining this witness as to reasons why he thought that the operating head of the company was not dealing with him in good faith.

Mr. EDISES. I submit that is Mr. Merrick's own interpreta-

627 tion and not necessarily the case. All that this gentleman testified to was the conversation.

Mr. MERRICK. He pointed it, however, by saying Mr. Stone changed the subject. The inference, I think, is quite clear.

Trial Examiner EICKHOFF. No; I won't allow the question.

Mr. MERRICK. I take it I don't have to take an exception to that ruling.

Trial Examiner EICKHOFF. No; we had a stipulation that all adverse rulings would be deemed excepted to.

By Mr. MERRICK:

Q. Have you ever examined the published reports issued by the Postal Telegraph Company, containing the balance sheet and operating and income statement certified to by a public accountant?

Mr. EDISES. Object to that question.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Can you recall, as nearly as your memory permits you, the exact words used by Mr. McLaughlin just before he asked Mr. Jorgensen to make some remarks at this meeting at the Bellevue Hotel?

A. I can only generalize.

Q. Will you repeat them as nearly as you recollect them?

A. He said, "Mr. Jorgensen has a list of names of the men who will not be taken back to work." And then Mr. Jorgensen read the list.

Q. He didn't say whether that meant permanently they
628 would not be taken back to work, or whether there were simply to be conditions?

A. He didn't qualify it at all; no.

Q. Will you repeat as accurately as you can what you heard Mr. Jorgensen say when he was called upon?

A. Mr. Jorgensen said, "The company will take you all back with the exception of the eleven men whose names I have here on a list." Then he read the names, and then he said, "Those men will have to fill out applications for re-employment and they will have to be passed on by Mr. Stone in New York."

Q. Mr. Palmer, as you understand them, what are the fundamental doctrines and principles which are referred to as communism?

Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. I don't want to influence your ruling on the subject, but again I call to your attention the fact that this witness also, on direct examination, testified that he told Mr. Rodman that his organization was not run by communists. He, therefore, must have ideas on the subject and they are relevant to this proceeding.

Trial Examiner EICKHOFF. I do not think he made any such statement on his direct examination.

629 Mr. MERRICK. The minutes will speak for themselves. But the ruling stands?

Trial Examiner EICKHOFF. Yes.

Mr. EDISES. May I at this time ask Mr. Merrick what his purpose is in bringing in this material? In other words, do you——

Trial Examiner EICKHOFF. He isn't bringing it in.

Mr. EDISES. He is endeavoring to open up this line of testimony. Do you intend to——

Trial Examiner EICKHOFF. He is not opening it up. I haven't allowed anything to be brought in or opened up yet.

Mr. MERRICK. Just to save time, can it be noted on the record that if permitted by the Examiner I would ask of this witness the same series of questions on this subject that I have asked the previous witnesses?

Trial Examiner EICKHOFF. You mean touching on——

Mr. MERRICK. (Interrupting.) This subject of communism, and the association of various men in this union with known communists,

and what the affiliations of this union are with other organizations, and so forth.

Mr. EDISES. I enter my objection to this entire line of questioning, Mr. Examiner.

Trial Examiner EICKHOFF. It may be stipulated that the same questions have been asked this witness, and the same objections made, and the Examiner made the same ruling.

630 Mr. MERRICK. And that the same questions would be asked of this witness that have been asked of the previous two witnesses, had not the Examiner stated that the same rulings would be adhered to, and the testimony barred.

Trial Examiner EICKHOFF. I do not understand you, Mr. Merrick.

Mr. MERRICK. I mean merely to state this: That if permitted by the Examiner I would ask him a series of questions on this general subject of communism, similar to those that I have asked the previous two witnesses. But I do not care to encumber the record and take up the time of everybody here going through them and asking you to make individual rulings, so I ask to have it noted, were it not that I am informed by you that you would rule against me on the admissibility of that testimony, I would ask that same series of questions.

Trial Examiner EICKHOFF. You wish that statement in the record?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. I see.

Mr. MERRICK. And that the testimony is offered for the same purpose that was stated in connection with the testimony sought to be elicited from the two prior witnesses.

Trial Examiner EICKHOFF. On that I said yesterday that it was not the appropriate time for you to offer proof, and Mr. Livingston,

631 I think, said, "Well, may I withdraw the offer and make it later?" and I said he might.

Now, do you want to offer it at this time, or want to follow what Mr. Livingston did yesterday?

Mr. MERRICK. I adhere to your suggestion as to procedure. My inclination would be to try to finish with a witness as completely as possible, without having to recall him at some future time. So if you are excluding them simply on the ground that this is not proper cross examination, I am willing to proceed with that line of questioning on the theory that I am making him my witness and asking them on direct examination.

Trial Examiner EICKHOFF. I would not allow direct examination at this time.

Mr. MERRICK. You are not making the ruling as to whether or not you would allow those questions on direct examination at what you may consider to be the proper time.

Trial Examiner EICKHOFF. I think that when you are putting in your case, if you have any offer of proof you should make it at that time.

Mr. MERRICK. That is perfectly agreeable to me, only it is very common practice in cases to permit cross examination to terminate and

proceed with direct examination by opposing counsel; but if you prefer to have it the other way, very well.

Trial Examiner EICKHOFF. I would prefer the other way.

632 By Mr. MERRICK:

Q. Mr. Palmer, have you been present at any meeting of your organization at which a boycott has been voted against the Mackay Radio and Telegraph Company?

A. I don't remember of being present at such a meeting.

Q. Are you willing to state under oath that you were not present at any meeting when a boycott was voted upon?

A. I am willing to state that I don't recall having been present at such a meeting.

Q. You know that a boycott was voted by your organization?

A. I don't know of a vote. I understand that a boycott is ordered against Mackay Radio, or exists.

Q. And you are still a member of ARTA, are you not?

A. I am.

Q. What do you understand to be that boycott; that is, what is boycotted?

A. Well, if I have occasion to send a telegram, I suppose that means that I should use some other system rather than Mackay Radio.

Q. Does that apply also to the Postal Telegraph?

A. I should think so.

Q. And if you have a cable to send it means, does it, that you are not to use either Commercial Cable Company or Commercial Pacific Cable Company?

Mr. EDISES. I object to that question, Mr. Examiner. He
633 testified, in the first place, that his knowledge of the boycott is vague and second handed, and now we are getting into the refinements of his interpretation of what that boycott consists of.

Trial Examiner EICKHOFF. I will allow it.

The WITNESS. What is the question, please?

(The question referred to was read aloud by the reporter as above recorded.)

A. Well, it is my understanding that during the strike traffic that would ordinarily be handled by Mackay Radio was turned over to the Postal Telegraph Company and Commercial Pacific Cable Company for handling. I don't know as they should suffer from the loss of my business. Incidentally I never sent any telegrams or cables anyway, so it doesn't matter.

Q. But your understanding is that if you had occasion to send one that your union desires you to use some other method than Commercial Cable Company or Commercial Pacific Cable Company?

A. That is a bridge that I would have to cross when I got to it; I don't know.

Q. You have no ideas on it at all?

A. Not a bit.

Examination by Trial Examiner EICKHOFF:

Q. Is it your understanding that this boycott is binding on every member of ARTA?

634 A. It is my understanding that the boycott is binding on every member of the marine ARTA. I have no knowledge of whether or not it is binding on point to point members of ARTA. It was a marine boycott.

Q. You are a member of what group yourself?

A. I am a point to point member.

By Mr. MERRICK:

Q. Have you any reason to believe that the boycott applies to one division of your union and not to the other?

A. I have no exact knowledge along those lines; no.

Q. What is your understanding as to the reason for the boycott?

A. I haven't given that much thought; that is, the reason for the boycott. I presume it is to bring about the acceptance or rejection of the marine agreement.

Q. Are you a regular reader of the organ entitled "ARTA"?

A. I am.

Q. Did you ever see the October 1935 number?

A. Yes; that is, I have.

Q. Did you ever notice the back cover of that magazine before?

A. I noticed that in particular yesterday.

Q. Have you ever read it through?

A. Not completely; no; just the headlines.

Q. Let me read it to you:

635 "Boycott Mackay!"

Trial Examiner EICKHOFF. Let the witness read it, please.

The WITNESS. To myself, or out loud?

Trial Examiner EICKHOFF. To yourself.

By Mr. MERRICK:

Q. What does it state there to be the purpose of the boycott?

Mr. EDISES. I object.

Trial Examiner EICKHOFF. You know what it states there? He has just read it. Now, if you have any questions to ask him based on that——

By Mr. MERRICK:

Q. It says there, does it not, "Boycott Mackay Into Reinstating Its Black-Listed Employees," does it not?

A. Yes; that is what it says.

Q. Do you consider yourself one of the black-listed employees?

A. I consider myself to be an employee that has been discriminated against because of union activities; yes.

Q. That is what you mean by "black-listed employee," is it?

A. I don't know whether I am black-listed or not. I have an idea that whatever happens here has a good deal to do with my future employment with the company.

Q. Is it a fact that persons referred to there as black-listed employees are the five persons who are the complainants in this
636 proceeding, and who have not been re-employed by Mackay after the termination of the strike?

Mr. EDISES. I submit he has no way of knowing whether or not——

Trial Examiner EICKHOFF. Well, let him say that if he doesn't know.

A. I don't know.

Trial Examiner EICKHOFF. I will let you ask his opinion, if you wish.

By Mr. MERRICK:

Q. Well, this advertisement is intended to be read by members of your union, isn't it?

A. That is correct.

Q. And it is intended to convey some expression of them?

A. I don't know that.

Q. What effect did that have on you, that is, a request by your union to do so—"Boycott Mackay into reinstating its black-listed employees"—What do you understand it requested by that instruction?

A. I think primarily that is intended for marine men.

Q. What marine men do you know of that are black-listed, if any?

A. I don't know.

Q. But you don't think this is intended to refer to the five people who have not been re-employed at the H. B. office?

A. It doesn't say so.

Q. I ask you what you think is intended by it? What it
637 means to you when you read it.

A. Let me read it again. [Laughter.]

Mr. MERRICK. There isn't any catch about this. [Laughter.]

Trial Examiner EICKHOFF. The question is, do you think it refers to the five of you here, or some other five?

By Mr. MERRICK:

Q. Or, are the five referred to here included as black-listed employees?

A. I suppose that is a possibility; yes.

Q. If that is so, then isn't it true that this boycott must necessarily run against the company that employs those men who are black-listed?

Mr. EDISES. I object to that question; it is hypothetical and speculative—If this is so, something else is so.

Trial Examiner EICKHOFF. Mr. Reporter, read the question.

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

Q. After reading this advertisement, and in the light of the statement that you have made by it, do you still have any doubt as to whether this boycott is intended to run against the services of the Mackay Radio in the domestic field and in the trans-oceanic field other than marine?

638 A. If so, I believe it is secondary. I think the primary purpose of that boycott is marine.

Q. And you think the primary purpose of it is to force the Mackay Radio to sign a marine agreement, not to sign a point to point agreement?

A. You are asking me questions about what I think. I haven't thought a great deal of it. I haven't given the matter any great deal of thought.

Q. When was the boycott first made effective, do you know?

A. I do not.

Q. If you were re-employed by the Mackay Radio Company, and you were put back to work at your regular position, the H. B. office, and you were requested by the proper officers of your union to do certain things in aid of a boycott against Mackay Radio and Telegraph Company, would you do them?

Mr. EDISES. I object to that question. It is hypothetical and speculative.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. May we have the same stipulation as to the series of questions regarding the boycott?

Trial Examiner EICKHOFF. Would you care to state them?

Mr. MERRICK. That, if permitted by the Examiner to do so, a series of questions would be asked of this witness similar to those asked of prior witnesses, as to his attitude on the boycott, and aimed to

639 bring out whether his allegiance to the union would take preference to his responsibilities and duties to his employer; and that they are not asked solely by reason of fact that the Examiner has stated that he would exclude them all.

Trial Examiner EICKHOFF. However, let it be perfectly clear that that refers only to similar questions.

Mr. EDISES. Mr. Examiner, I'd like to limit that if possible to those questions which were objected to, and to which objections were sustained.

Trial Examiner EICKHOFF. I think that naturally follows. Isn't that your understanding, Mr. Merrick?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. It only goes to the same or similar questions which were objected to, and which objections were sustained.

Do you want to take a recess? But just a minute! First, I want this to appear: That if the Examiner has ruled that any evidence called for by one side and produced by the other must be offered in

evidence, it is quite likely an error because Section 11 of the Act would seem to indicate another state of affairs.

We shall now take a recess for about ten minutes.

(At this point a recess was taken, after which proceedings were resumed, as follows:)

640 Trial Examiner EICKHOFF: You may proceed.

By Mr. MERRICK:

Q. Mr. Palmer, do you know whether there is a point to point division, Local No. 7, of your organization in Los Angeles?

A. No; I do not.

Q. You never heard anything about there being a local down there?

A. Only in a vague way. I understand that we did have a smattering of an organization down there, but it never was very successfully organized in Los Angeles.

Q. Have you ever seen any copies of this pamphlet entitled, "The Little ARTA Bulletin," of Southern California, RCA, PTP locals of Los Angeles, California?

A. No; I never saw that bulletin before.

Q. You have never seen this before either?

A. No.

Q. Would the fact that there is such a bulletin published and on page —? There is an unnumbered page in the bulletin dated—I can't find the date, but it is numbered Volume One, No. 6, containing an insert reading: "Mackay Radio is unfair to organized labor. Stay away from Mackay Radio and Postal Telegraph. Use Globe Wireless, RCA, Western Union, for your telegraph file. Fraternally yours, P. T. P. Division, Local No. 7, ARTA."

Does it refresh your recollection any as to whether this
641 boycott is intended to apply to point to point members of the union?

A. It does not. I have never seen that pamphlet before; no.

Q. Would you be prepared to say, at this time, that the boycott does not apply to the point to point members?

A. I am not in any position to say that.

Q. Do you know where the national headquarters of your organization is?

A. The national headquarters of the ARTA is in New City.

Q. Is the address 10 Bridge street, New York?

A. I do not know.

Q. Have you ever seen any of the official stationery?

A. I suppose I have.

Q. Can you identify that as being the official letterhead of your organization?

[Counsel Merrick hands paper to witness.]

Mr. EDISES. Let me see that.

By Mr. MERRICK:

Q. Have you ever seen this particular document before, or copies of it?

A. No, no.

Q. Have you any reason to believe that this is not a statement put out by your association?

642 Mr. EDISES. I object to this question, Mr. Examiner. No evidence has been inserted at all indicating where this was obtained from or who put it out. It is true that it appears on a piece of paper headed, "American Radio Telegraphers' Association," but no foundation for its authenticity has been established.

Trial Examiner EICKHOFF. I think counsel is correct. Are you going to offer it in evidence?

Mr. MERRICK. I am willing to offer it in evidence. Have you any objection to this being in evidence?

Trial Examiner EICKHOFF. Apparently all this witness can say is that this is one of the letterheads.

Mr. MERRICK. I admitted copies of other matters that had been produced here, even though there was no absolute proof of their authenticity.

Trial Examiner EICKHOFF. Well, if Mr. Edises can satisfy himself as to the authenticity——

Mr. EDISES. (Interrupting.) There is no way I can, but I can possibly consult with one of the men here and get their opinion on it.

Trial Examiner EICKHOFF. Would you like to do that?

Mr. MERRICK. I appreciate it.

[Counsel Edises consults with Mr. Salisbury.]

Mr. EDISES. Well, Mr. Examiner, no one of these men are able to give any indication whatever of the authenticity of it, and un-

643 der the circumstances I don't feel I can stipulate that it may go in, particularly so since Mr. Merrick voiced objections to cluttering up the record.

Trail Examiner EICKHOFF. Here is something for you, something else for you to look at, Mr. Edises.

[Trial Examiner Eickhoff hands Counsel Edises document.]

By Mr. MERRICK:

Q. I show you a document consisting of a single mimeographed sheet, headed at the top, "American Radio Telegraphists' Association, 52 California street, San Francisco," dated October 24, 1935, signed "American Radio Telegraphists' Association, Western Division, by Mervyn Rathborne, Acting Secretary, San Francisco Local No. 3," and ask whether you have ever seen that, or a similar document?

A. No.

Q. Are you familiar with Mr. Rathborne's signature?

A. In a general way; yes.

Q. Would you say that that signature there is his?

A. Yes.

Mr. EDISES. It is not an original signature; it is a very hazy, ill-defined mimeographed copy of a signature. I object to the question.

Trial Examiner EICKHOFF. He answered "Yes."

The WITNESS. I did not.

Mr. EDISES. I object to that question. It is impossible to identify on this document.

Trial Examiner EICKHOFF. Well, you may ask whether it
644 looks like his signature.

The WITNESS. I am not that familiar with his signature.

By Mr. MERRICK:

Q. How many times have you ever seen his signature, to your recollection?

A. Oh, maybe half a dozen times.

Q. Are you unable to answer whether or not that appears to be his signature, looks like his signature?

A. If I had a check with that on it, I don't know whether I would cash it or not.

Trial Examiner EICKHOFF. Well, it is only a facsimile in any case, isn't it?

Mr. MERRICK. That is correct.

Q. I'd like to ask you whether or not in your opinion this statement is correct.

"On October 8th, 1935, a strike was declared against Mackay Radio Telegraph Company by the American Radio Telegraphists' Association. This action resulted in the blacklisting of 20 ARTA members. Consequently, this organization and the San Francisco Bay area District Council No. 2 of the Maritime Federation, have declared Mackay Radio & Telegraph Company, the Postal Telegraph Company, all American Cables, and all other organizations which are affiliates of the ITT, as being unfair. It is urgently requested that you cooperate with us in this matter, and in the future send all your telegrams by Western Union, or RCA Communications Incorporated."

645 Is that, according to your understanding, a correct statement of the reason for calling or declaring this boycott?

Mr. EDISES. I object to that question on the ground that there is no showing in the record of the authenticity of this document.

Trial Examiner EICKHOFF. Well, aside from the document, he has made a statement. He asks the witness if it is correct.

Mr. EDISES. Well, the assurance of his opinion of the correctness or incorrectness might be influenced by this preliminary question as to whether this document is one supposed to reflect or be binding on him.

Trial Examiner EICKHOFF. I don't know that the witness—Can you answer that? Answer the question if you can.

A. It is not clear to me, but it is my understanding that the boycott was called by the marine division of our organization to obtain their demands, their agreements.

Trial Examiner EICKHOFF. Let me see that.

[Witness hands document to Trial Examiner Eickhoff.]

By Mr. MERRICK:

Q. Is it your opinion, then, if the American Radio Telegraphists' Association had been sending out a circular similar to that which I have exhibited to you over the purported signature of Mr. Mervyn Rathborne, that that is a misrepresentation of the fact in regard to the boycott?

646 Mr. EDISES. I object to that as calling for an opinion of the witness. It is speculative material.

Trial Examiner EICKHOFF. I will allow it for what it may be worth.

A. I don't know, in the first place, whether that has been sent out. I have never received a copy if it has.

By Mr. MERRICK:

Q. But you believe that it is an incorrect statement of the nature of the boycott?

Mr. EDISES. I object on the ground that it is too general. If counsel will point out various statements—There are a lot of statements of fact in there—and ask him which ones he feels are correct, the witness will have a much better opportunity to answer more accurately.

Mr. MERRICK. I will read the whole document, if you wish.

Trial Examiner EICKHOFF. Let the witness read it again.

A. Well, it is incorrect right at the start. It should read "October 4, the strike was declared." As to whether there were 20 ARTA members locked out or black-listed I don't know.

By Mr. MERRICK:

Q. If that is correct, then this strike does run against more than the maritime division of the Mackay Radio, and more than the members of the marine division of your local are requested to participate in the boycott.

Mr. EDISES. I object to that question as being hypothetical, speculative, and, moreover, a compound question.

647 Trial Examiner EICKHOFF. Objection sustained on the ground that it calls for the opinion and conclusion of the witness.

Mr. MERRICK. You mean as being called against more than the marine division?

Trial Examiner EICKHOFF. Let me see it.

[Trial Examiner Eickhoff examines papers.]

Trial Examiner EICKHOFF. This is the clause I had in mind: "It is urgently requested that you cooperate with us in this matter."

Mr. MERRICK. It is addressed: "Dear Brothers."

Mr. EDISES. To whom?

Trial Examiner EICKHOFF. To all delegates of the District Council of the Maritime Federation.

Mr. EDISES. It doesn't say anything about Mackay or H. B. office, or anything in there.

Mr. MERRICK. But it asks to have not only the Mackay Radio, but the Postal Telegraph Company and affiliated companies of the IT&T boycotted, which indicates that the boycott is intended to run against more than the marine services of Mackay Radio & Telegraph Company.

Mr. EDISES. I submit that that is counsel's conclusion.

Mr. MERRICK. I am willing to agree to that.

[Trial Examiner Eickhoff returns paper to witness.]

Mr. EDISES. May I see that for a moment?

648 Mr. MERRICK. I think there is a pending question.

Trial Examiner EICKHOFF. Mr. Reporter, will you read the question?

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. Well, I have sustained the objection to the last question—the one that called for the opinion and conclusion of the witness, and as to the effect of this letter.

Mr. MERRICK. Well I am using it to question the statement that he made that he does not consider this boycott binding on him, as a point to point man.

Trial Examiner EICKHOFF. Yes. Now, if his view does not correspond with some view expressed in the letter, I think you may ask him that.

By Mr. MERRICK:

Q. That is what I am asking, whether he disagrees with this statement, and whether having read this, he cares to change his testimony as to what is the purpose of the boycott.

Mr. EDISES. I object to his being asked whether he has changed his opinion after having read it in view of the fact that the authenticity and the genuineness of that has not been established.

Trial Examiner EICKHOFF. Well, he can pick up a piece of
649 paper on the floor and be asked if he has changed his opinion about it, as far as that goes. It is cross examination.

A. It is my interpretation that the boycott is to affect the marine division of our organization.

By Trial Examiner EICKHOFF:

Q. Let me get you clear. It is binding only upon the marine members of your organization and effective only on the marine services of the Mackay Radio & Telegraph Company?

A. That is my interpretation.

Q. And you haven't changed that after reading the letter?

A. No.

By Mr. MERRICK:

Q. Mr. Palmer, you heard the definition that was given yesterday by Mr. Loudermilk of the word "Scab," did you not?

A. Yes.

Q. Do you agree with those definitions?
A. I do.
Mr. EDISES. I object to this question.
Trial Examiner EICKHOFF. Already answered.

By Mr. MERRICK:

Q. In your opinion is a scab "lower than the louse," and "the lowest form of human life"?
Mr. EDISES. I object to this question, Mr. Examiner.
Trial Examiner EICKHOFF. On what grounds, Mr. Edises?
Mr. EDISES. Well, on the grounds that if he wants to find out his opinion of what a scab is, why, let him ask him but let him not
650 start by giving all these Shakesperian quotations things of that sort.
Trial Examiner EICKHOFF. Sustained.
Mr. MERRICK. I didn't hear the ruling.
Trial Examiner EICKHOFF. The objection is sustained, of the louse. [Laughter.]

By Mr. MERRICK:

Q. What is your opinion of a scab, Mr. Palmer?
A. I'd rather not say.
Q. Is it because there is a lady present in the room, that you decline to give your definition?
Trial Examiner EICKHOFF. The witness has agreed with the definition which was given yesterday.
Mr. MERRICK. I have asked him some more questions on the same subject.
Trial Examiner EICKHOFF. I think that is sufficient.
Mr. MERRICK. He has declined to answer the question. I would like to be permitted to examine him as to the reasons why he has declined to answer.
Trial Examiner EICKHOFF. Very well.

By Mr. MERRICK:

Q. I repeat my question.
Trial Examiner EICKHOFF. However, he is sustained by ruling.
Mr. MERRICK. You did not permit him to answer the question of whether the presence of a lady in the audience is the reason why he refuses to define the word "scab"?
651 Trial Examiner EICKHOFF. Then, that is not what I said.

By Mr. MERRICK:

Q. Let me ask again, is it because there is a lady present in the room that you decline to state your opinion of a scab?
A. I don't have sufficient command of the language to go into that.
Q. That is, you can not think of any terms vile enough to express your feelings toward a scab?
A. Put it that way, if you like.
Q. Is that what you intend to convey by your answer?

A. I can't possibly define a scab. I think it has been done several times before and it suits my feelings pretty well.

Q. Let me repeat: Is it because you can not think of any terms vile enough that you are unable to describe him?

A. Not exactly; no.

Q. What other reason have you?

Trial Examiner EICKHOFF. I think there is about enough of this, Mr. Merrick. The degree of the witness' feeling toward a scab is certainly not the issue here.

Mr. MERRICK. I differ with the Examiner on that point.

Trial Examiner EICKHOFF. If he adopts Webster's definition as he has, I don't think you need to color it much further.

Mr. MERRICK. Well, in my opinion, I do need to go a little further.

652 Trial Examiner EICKHOFF. Well, I differ with you, and I won't permit it. I won't permit any further examination on that point.

Mr. MERRICK. And you decline to permit him to answer that last question?

Trial Examiner EICKHOFF. Yes.

By Mr. MERRICK:

Q. Do you know when a person is a scab and when he is not a scab?

A. Well, when a person assumes my job because I attempted—attempted in trying to help someone else to obtain better conditions, I think that person is a scab.

Q. Is any person who takes employment during a strike a scab?

Trial Examiner EICKHOFF. That question is a little bit general, Mr. Merrick.

By Mr. MERRICK:

Q. To general for you to be able to answer, Mr. Palmer?

A. I don't know exactly to what you refer.

Q. When men walk out, and then others come in and take their positions, do you consider them scabs? Is that correct?

A. Yes; that is correct.

Q. If a person returns to work in violation of a strike order, is he a scab; or continues to work in violation of a strike order, is he a scab?

A. Not necessarily in this case here. Those fellows that
653 went back to work, I don't believe they are scabs—no.

Q. What is the line that you draw between them? You say these fellows in this particular case are not scabs; in all other cases where persons go back to work before a strike is ended, is he considered a scab?

A. No; I think that the fellows who were imported into this local by Mackay Radio are scabs.

Q. But any additional employees taken on in this locality during the strike are not scabs?

The WITNESS. What is that?

(The question referred to was read aloud by the reporter as above recorded.)

A. I don't know that that was done.

Q. Well, I am asking you whether your definition of a scab includes such a person.

A. That would depend on the circumstances. I don't know exactly what you mean.

Q. Your previous answer was that, in case of people brought in from outside to work during the strike, you considered them scabs. I asked you if you don't consider persons who are not brought in from outside, but who are present in the locality of the strike, if they are not also scabs, if they take employment during the period of the strike.

A. If they knew strike conditions prevailed at the time, and they took jobs, they would be scabs, in my opinion.

654 Q. And a strike condition prevails from the time it is called until it is called off, isn't it?

A. I think so.

Q. In your opinion?

A. Yes.

Examination by Trial Examiner EICKHOFF:

Q. Well, suppose a strike is collapsed to the extent that the men went back to work without any official action by the union, would you say that the strike was still on or off?

A. I would say definitely off.

Q. In other words, it is not entirely dependent upon the action taken in a union meeting?

A. No.

By Mr. MERRICK:

Q. What percentage of men, in your opinion, have to go back to work before a strike is off?

A. I should say a large majority of the union members.

Q. That is, a strike continues until a large majority of union members go back to work?

A. That would be my opinion.

Q. And by "large majority" you mean more than 51 per cent?

A. Much more.

Q. How much more?

Mr. EDISES. Mr. Examiner, I want to object to that question
655 on the ground that that is an extremely hypothetical question. It might vary in different circumstances.

Mr. MERRICK. I object to your remarks being intended to instruct this witness.

Mr. EDISES. I object to your objection, I have no intention to instruct the witness.

Mr. MERRICK. You are.

Trial Examiner EICKHOFF. If the witness has any opinion on the subject, I can't see any harm in this. It may not have much weight.

The WITNESS. What was the question?

(The question referred to was read aloud by the reporter as above recorded.)

A. Oh, say 90 per cent.

By Mr. MERRICK:

Q. So that from the time the strike has been called by an official of the union until the time that at least 90 per cent of the members of the union have gone back to work, the strike remains in effect, and, as you said, the strike condition continues; is that correct?

Trial Examiner EICKHOFF. He said that was his opinion.

Mr. MERRICK. That is what I am asking him.

A. That is my opinion, approximately.

By Mr. MERRICK:

Q. I take it there is no definite rule in your organization on that subject?

A. I don't know of any.

Q. So that one person might think 90 per cent, and another
656 person might think it more or less?

Mr. EDISES. I object to that question. He has no way of knowing what other people think.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Then, Mr. Palmer, it would be a matter of individual opinion as to when a strike condition ended, in the event of a strike, prior to the time that the strike had been officially called off; is that correct?

Trial Examiner EICKHOFF. I think that is obvious and is a matter of argument, Mr. Merrick.

Mr. EDISES. Well, I object to the question and the line of questioning, on the ground that it is extremely problematical. If he wants to relate it to this particular strike, let him do it. When he is asked to answer these questions about strikes in general——

Trial Examiner EICKHOFF. Sustained. This witness has given his opinion, and it is well known that there may be other opinions.

Mr. EDISES. I move to strike all the testimony as to what his opinion is, as to when the strike is off.

Trial Examiner EICKHOFF. Denied.

Mr. MERRICK. I should like to state this line of questioning results from the Examiner's question as to whether or not a strike would
not be considered off when it was apparent that the strike
657 had—I think that you used the word——

Trial Examiner EICKHOFF. Collapsed.

Mr. MERRICK. (Continuing.) Collapsed. Now, if the question of whether or not, in this witness' opinion, a person is a scab depends upon when a strike is to be considered to have collapsed, then I think I am entitled to question him a little further as to whether, or at what point a strike should be considered to have collapsed.

Trial Examiner EICKHOFF. I merely stopped you because I thought you were bringing out nothing new or nothing that was obvious.

Mr. MERRICK. Well, is there any reason why, on cross examination, I can't be positively sure that the witness intends to make the answers that he has made, and ask him a further question, and make sure that he intends that answer?

Trial Examiner EICKHOFF. No; I think everything has been cleared up and gone the full length that you could.

Mr. MERRICK. Then I understand that the Examiner, in his opinion, that on the testimony so far it is clear that in this witness' opinion, when a strike ends or collapses, when a strike condition terminates, is a matter of personal opinion on the part of the members that are participating in the strike.

Trial Examiner EICKHOFF. Is that your understanding?

658 Mr. MERRICK. I ask you, since you are determining whether or not I shall be permitted to ask this question on the basis of what you consider to be in the record. I think I am entitled to know what you are—what you consider to be in the record.

Trial Examiner EICKHOFF. Well, I just told you. This witness has given his opinion as to what percentage of men going back to work would affect the calling off of a strike.

Mr. MERRICK. And I asked him a further question as to whether or not, in his opinion, when a strike terminated was merely a matter of opinion of the members taken back in the strike, and you excluded it.

Trial Examiner EICKHOFF. I don't recall that.

A. Well, I don't think opinions would differ very much about when this strike collapsed.

By Mr. MERRICK:

Q. Can you answer the question that was put to you? Is it a matter of opinion of the members taking part in the strike when the strike terminates?

A. That is not my exact understanding.

Q. What is your understanding of when a strike ends, other than by a calling off of the strike by the union that called it?

A. When a majority of men return to work.

Q. And you define the majority 90 per cent?

A. Approximately.

Q. And you admitted, did you not, that other people might

659 think it required other percentages than 90 per cent?

A. It may.

Q. Have you yourself taken any action whatsoever in aid of the boycott against Mackay Radio?

A. No.

Q. Did you take any part in an attack on Mr. McLaughlin on the night of November 29, 1935?

A. I didn't know there was an attack until several days after.

Q. Did you go down to the airport at Mills Field in the morning of Tuesday, October 8, 1935, for the purpose of meeting the airplane that

was supposed to land at that time on the field bringing on certain operators from New York or Chicago?

A. No.

Q. Did you hear anyone discuss sending people down to the field for the purpose of meeting that plane?

A. No.

Q. Do you know anyone who went down there for that purpose?

A. No.

Q. Have you an application pending before the RCA for a position?

Mr. EDISES. Object to this question. I fail to see that that has any bearing upon what we have in this case, whether he has an application or not.

660 Trial Examiner EICKHOFF. I don't see the bearing. What is it?

Mr. MERRICK. I want to know when he filed it, before or after he left—whether he had filed it before or after the strike.

Mr. EDISES. I fail to see that that makes any difference either.

Trial Examiner EICKHOFF. I will allow the question.

The WITNESS. You say, have I?

Mr. MERRICK. Yes.

A. Yes; I have.

By Mr. MERRICK:

Q. On what date did you file that application, approximately?

A. Approximately two weeks after—approximately the 22nd or 23rd of October.

Q. Were you given any definite answer about employment with that company?

Mr. EDISES. I object to that question. I fail to see that that has any bearing.

Trial Examiner EICKHOFF. I will allow it.

A. I was told that it might be possible for me to obtain employment there.

By Mr. MERRICK:

Q. Did they say that they thought there might be an opening for you?

A. No.

661 Q. Have you ever been convicted of a felony?

A. No.

Q. Or of a misdemeanor?

Mr. EDISES. I object to that question, Mr. Examiner. He is trying to impeach his credibility. I don't believe he can do it by reference to misdemeanors; I don't know whether he has been or not.

Trial Examiner EICKHOFF. That is my understanding of a rule in this jurisdiction, at least.

Mr. MERRICK. What is this jurisdiction, may I ask?

Trial Examiner EICKHOFF. This Federal District.

Mr. MERRICK. Are you following, as you understand it, the rules of evidence that are in force in the Federal District?

Trial Examiner EICKHOFF. I may in this instance, to have some guide.

Mr. MERRICK. That is, you are following in this particular instance, the rule of the locality?

Trial Examiner EICKHOFF. I said I may.

Mr. MERRICK. But you are not giving counsel any guide as to whether or not you will in the future follow those rules?

Trial Examiner EICKHOFF. Not at the moment; no.

Do counsel wish to proceed tomorrow morning?

Mr. MERRICK. I am in favor of it.

Mr. EDISES. Yes; I would like to.

662 Trial Examiner EICKHOFF. Well, then, we will have a session from ten until noon, no afternoon session.

Is this witness excused, or have you further examination, Mr. Edises?

Mr. EDISES. May I answer that in just a second, please?

Mr. Examiner, my redirect won't be very long, but I imagine it will be just as well to adjourn now and finish with this witness in the morning.

Trial Examiner EICKHOFF. Will you please return in the morning at ten o'clock? The hearing is adjourned for the day.

(Thereupon at 4:00 o'clock p. m. the hearing in the above-entitled cause was adjourned until 10:00 o'clock a. m., Saturday, December 7, 1935.)

663 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Saturday, December 7, 1935.

Met pursuant to adjournment at 10:10 o'clock a. m.

PROCEEDINGS

Trial Examiner EICKHOFF. You may proceed, Mr. Edises.

GLENN E. PALMER, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Redirect examination by Mr. EDISES:

664 Q. Mr. Palmer, what circuits did you work at the Mackay H. B. office?

A. I worked all the circuits. At the time of the strike I was regularly assigned to the New York-San Francisco circuit.

Q. Did you at various times work any of the foreign circuits?

A. I did.

Q. Which one?

A. I worked both the Tokio-San Francisco circuit and the Shanghai San Francisco circuit.

Q. How long did you work the Tokio-San Francisco circuit?

A. On an average of eight hours a week, which would be one day a week.

Q. Regularly one day a week?

A. Yes.

Q. And the other circuits that you just mentioned?

A. Occasionally.

Q. Well, were you moved about from one circuit to the other indiscriminately?

A. When the regular operator wasn't present, why then usually I, or another New York operator, made that relief and worked his trick.

Q. Do you know Mr. Hatch?

A. I do.

Q. What was his job with Mackay?

665 A. He was the office electrician. His duties were to keep the equipment in working condition.

Mr. MERRICK. Mr. Examiner, I have no objection to this testimony, but I want to call attention to the fact that that is not proper redirect.

Mr. EDISES. I have one or two questions on that point, Mr. Examiner.

By Mr. EDISES:

Q. Did anybody work under him?

A. Yes; Mr. Hoxie and Mr. Henning.

Q. Do you know if he had anything to do with the purchasing of supplies and equipment?

A. I think that he submitted requisitions for supplies and equipment; yes.

Q. When did Mr. Hatch join the union?

A. Approximately seven or eight months ago.

Q. Did he hold any office?

A. No.

Q. Does he still belong to the union?

A. I understand that he resigned from the union.

Q. Do you know when he resigned?

A. After the strike.

Q. Has anybody else resigned from the union since the strike?

A. Not to my knowledge.

Mr. EDISES. That is all I have on redirect.

666 May I at this time ask Mr. Merrick if he will produce, if it is available, the time sheet for October 8?

Mr. MERRICK. That is the sheet I previously gave you—you were given the 9th.

Mr. EDISES. Yes.

Mr. MERRICK. Well, if there is one available. I think I previously stated the time sheets were not kept during part of the time covered by the strike. If there is a time sheet available for that date, we will produce it.

Mr. EDISES. Assuming that the men went back to work on Tuesday morning there would surely be a record indicating when they went to work, and how long they worked on that day, would there not?

Mr. MERRICK. Yes; there is evidence of the time which they returned to work.

Mr. EDISES. Whatever document that is, that is the one I would like to have.

I would like to have produced the records——

Mr. MERRICK. Did you finish with this witness?

Mr. EDISES. I am through.

Mr. MERRICK. I am not.

Mr. EDISES. If you want to recross, very well. I though at this time I would make my requests.

Mr. MERRICK. I have one question to ask him.

667 Mr. EDISES. You proceed with your question and I will make whatever requests I have after that.

Recross examination by Mr. MERRICK:

Q. Mr. Palmer, you just said that you understood that Mr. Hatch submitted requisitions for supplies. Will you explain what you meant by that? To whom did he submit them?

A. I am not really sure on that point. It is my understanding, however, that when it is necessary to have additional equipment or replacements for the office, that he makes the fact known to the engineering office.

Q. You don't know whether or not he makes suggestions as to needed supplies to Captain Dodd?

A. I don't know that, whether it is true or whether it isn't true, no.

Q. Have you ever seen any letters ordering equipment, signed by Mr. Hatch?

A. No; I don't remember having seen any letters of that nature.

Q. Have you any reason to believe that Mr. Hatch the authority to purchase equipment without the approval of some higher official in the organization?

A. I don't believe that any one has the authority to purchase equipment without some one else's approval. It is my belief that Mr. Hatch merely makes known his needs and then that perhaps is passed on by some one else.

668 Mr. MERRICK. That is all.

Mr. EDISES. That is all.

Colloquy

Trial Examiner EICKHOFF. Is that all, Mr. Edises?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. May this witness be excused?

Mr. EDISES. As far as I am concerned.

Trial Examiner EICKHOFF. For the rest of the hearing?

Mr. EDISES. Well, as far as I know we won't have any further need of him.

Mr. MERRICK. On account of the fact that the Examiner has barred a good many questions that I asked this witness, on the ground that they were not proper cross examination and he did not wish to permit

direct examination at this time, it may be that I would like to call him later.

Trial Examiner EICKHOFF. Will you please keep in touch with the Board so that they can call you?

The WITNESS. Yes.

Trial Examiner EICKHOFF. Otherwise you may be excused now.

(Witness excused.)

Mr. EDISES. At this time I would like to request the records of the operators' errors. If that is a large request, perhaps it may be possible to stipulate that you are not making any complaint in regard to the efficiency or ability of these five men who have been refused
669 reemployment, and that their work was satisfactory and not a cause of their refusal to be reemployed.

Mr. MERRICK. I am sorry I cannot take you seriously.

Mr. EDISES. I am sorry, too, Mr. Merrick, that you cannot, but I am quite serious about it.

Trial Examiner EICKHOFF. What is it that you want? You want the records concerning these five men who are named in the complaint?

Mr. EDISES. Their error records.

Trial Examiner EICKHOFF. If any such exists?

Mr. EDISES. If any such exist. I believe it would be valuable also to have the error record of the other six men on the list.

Mr. MERRICK. May I state at this time that Mr. Jorgensen is under request by the Board to appear as a witness? He is here every day, and Mr. Rodman and Mr. Dodd. They, if any one, know about this list and why each name was put on the list, and if they are not called by the Board I expect to put one or all of them on the witness stand and they will read the names on the list and give the reason why each man's name is there. I think that is sufficient.

Trial Examiner EICKHOFF. If such records as counsel has mentioned exist and are in possession of the company, I think you should produce them.

670 Mr. MERRICK. I am not sure what my own opinion is as to the proper interpretation of the section that the Examiner referred to yesterday, and whether it is given such broad interpretation as suggested here, and that I would follow it without some admonition from the Court. It seems to me that the offer that I have made is ample. Whatever records there are will be put on, if these witnesses are called either by the Board or by counsel for the Respondent.

Trial Examiner EICKHOFF. Do you deny that such records exist, or do you just decline to produce them?

Mr. MERRICK. I don't know.

Trial Examiner EICKHOFF. If they exist, will you produce them or do you decline to produce them?

Mr. MERRICK. I prefer not to commit myself on that point.

Mr. EDISES. Isn't it possible for you to find out by asking Mr. Rodman or Mr. Jorgensen whether such records exist?

Mr. MERRICK. Do you mean contemporaneous records made at the time the errors were reported? I don't know what you mean.

Mr. EDISES. My understanding is there is a very elaborate course of procedure gone through every time an operator commits an error of any kind, and that an record is kept of those errors. Perhaps I am mistaken.

Mr. MERRICK. Perhaps you are.

671 Mr. EDISES. I am sure Mr. Rodman, or Mr. Jorgensen will know.

Mr. MERRICK. It doesn't seem to be the proper way to try a case. If you want to call the men who know about it, and examine them to your heart's content, do so.

Mr. EDISES. Are you stating I have no right to ask for the production of these records if they exist?

Mr. MERRICK. I am not admitting the right.

Trial Examiner EICKHOFF. I think it is pretty plain now that you should either decline to produce them, or say you will produce them if you wish, and take a position in the matter.

Mr. MERRICK. Is their production going to be one for examining only, without any understanding that they will be put in evidence if produced?

Mr. EDISES. I wish to examine them, and it is possible that I may introduce them in evidence.

Mr. MERRICK. It is an important point, and to any judicial procedure with which I am acquainted, you haven't the right to call for a document during the course of a trial except on the understanding that it will be offered in evidence if produced. Whether the act means something different, I am not prepared to state, and if it does mean something different, whether I would follow that without instructions from the Court.

672 Trial Examiner EICKHOFF. The California Statutes on that point expressly provide that the party calling for such evidence, after examining it, need not introduce it in evidence. Not basing my ruling on the California Statute, I would, however, rule that way.

Mr. MERRICK. I don't know the statute, but I intend, before any further evidence has been produced, to request the Examiner to enlighten counsel, as far as he can, as to what the rules are which guide the procedure in this case.

Some reference yesterday was made to the rules in the Federal Court for this District. Now I hear mention of a California statute. I think that it is incumbent on the Examiner to advise counsel, at least in that respect, what rules in his opinion, are applicable to this proceeding.

Trial Examiner EICKHOFF. In my opinion, no rules are controlling. But in making my rulings, I may take, as a guide, some statute or some rule. Now, after reading Section 11 of the Act, and referring to the California statute, which would ordinarily apply in this Federal District, my ruling would be that counsel would not be obliged to offer in evidence everything that he called upon opposing counsel to be produced.

Mr. MERRICK. I will see if I can find out whether there are any such records.

(Whereupon counsel Merrick conferred with representatives of the Respondent.)

673 Mr. MERRICK. To save time, wouldn't it be sufficient for counsel if I agree either to bring these in on Monday morning or give him a definite answer that I will decline to produce them, Monday morning?

Trial Examiner EICKHOFF. Do you know at this time whether or not such records exist?

Mr. MERRICK. I will not know until I have seen the papers to which some of these men refer, whether they are the kind of things that the attorney for the Board is speaking of.

Trial Examiner EICKHOFF. Well, the Monday morning hearing is only two hours or so away, and that will probably suffice at the present.

Mr. EDISES. Do I understand counsel to take the position that he will answer on Monday as to whether he prefers to acquiesce in my request or not?

Mr. MERRICK. That is correct.

Trial Examiner EICKHOFF. That wasn't it exactly. He would either decline to produce the documents, or state they are not existing; wasn't that it?

Mr. MERRICK. No. I will either produce them or state their nonexistence or definitely decline to produce them, admitting their existence.

Trial Examiner EICKHOFF. Very well. I think that is enough to go in the record on that.

674 Mr. EDISES. Is it understood that my request goes to the error records of the eleven men who were on the list?

I also wish to amplify that request to include whatever error records there are for the men who have taken the places of the five men who have been refused re-employment.

Mr. MERRICK. Those cannot be produced here. The five men were not prior employes.

Mr. EDISES. I mean since they have been in the H. B. office.

Have you at this time, Mr. Merrick, the letter, or, rather, the document that was referred to yesterday as having been read by Mr. Rodman in the presence of Mr. Loudermilk and Mr. Palmer?

Mr. MERRICK. On what date do you say that Mr. Rodman read from the paper?

Mr. EDISES. It is in the record—Tuesday, October 8.

Mr. MERRICK. Yes; I have the document here. Do you ask to have it produced for the purpose of being put in the record?

Mr. EDISES. I should prefer to examine it first.

Mr. MERRICK. You definitely refuse, then, to accept this on the condition that it will be put in the record?

Mr. EDISES. I think I have the privilege of asking for it for the purpose of examination.

675 Trial Examiner EICKHOFF. I think so, too.

Mr. MERRICK. Counsel declines to answer the question?

Trial Examiner EICKHOFF. That is my understanding.

Mr. EDISES. Correct.

(Thereupon counsel Merrick handed to counsel Edises the document referred to.)

Mr. EDISES. Mr. Hatch, please take the stand.

Mr. MERRICK. Just a moment! That is handed to you for examination.

Mr. EDISES. May I not be permitted to examine it sometime during the morning? Do I have to examine it at this moment? I don't know that the Act requires me to examine these documents at any particular time, so long as it is within a reasonable time.

Mr. MERRICK. The Act does not require me to turn over a document to you. It says you may be permitted to examine them. If we are going to be technical and follow the Act, all right.

Mr. EDISES. I don't desire to be unreasonable in the matter. I have no objection to looking at it now.

(Thereupon counsel Edises examined the document referred to.)

Mr. MERRICK. Just to save time, I would suggest that counsel for the Board make these requests outside of the hours of the

676 hearing. Also, I am going to state that I have no objection to that document being put in evidence; and if not put in evidence by the attorney for the Board, I will offer it myself.

Mr. EDISES. I would like to have this marked for identification; and if counsel for the respondent doesn't want to put it in evidence, I will put it in later.

Mr. MERRICK. Put it in evidence now by stipulation. This is the paper referred to in the testimony of these two previous witnesses.

Mr. EDISES. I don't want to stipulate this is the paper. I want to be able to examine it as to whether it is or not.

Trial Examiner EICKHOFF. We have consumed a good deal of time in calling for this document and in the production of it. I suggest that in the future that these requests for documents be distinctly and definitely stated, and that at the next session counsel will know where that document is, or have some brief definite statement to make concerning it, so we won't have to take 15 or 20 minutes milling around on what document is referred to, and where it is, and this, that, and the other thing.

It may be marked for identification as "Board's Exhibit No. 5 for Identification."

(The document referred to was marked "Board's Exhibit No. 5 for Identification.")

677 Mr. EDISES. Mr. Bash, will you take the stand?

L. K. Bash, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination by Mr. Edises:

Q. What is your name?
A. L. K. Bash.
Q. Your address?
A. 45 Lagoma, Mill Valley.
Q. Are you married?
A. Yes.
Q. Any children?
A. One.
Q. How old?
A. Eight.
Q. When did you go to work for Mackay Radio Company?
A. February 19, 1927.
Q. Who did you work for before that, in the radio field?
A. I have been in the Signal Corps for six years.
Trial Examiner Eickhoff. Army?
The Witness. Yes.

By Mr. Edises:

Q. What class operator have you been at the Mackay?
A. Well, all except the period when I first started, two or three months' trial period, I forget which, I have been
678 top operator, first class operator.
Q. What salary did you receive when you went to work for Mackay?
A. $150.
Q. And did you receive any increases?
A. Yes. After this probationary period, or whatever it is called, I was raised to $160.
Q. Any other increases?
A. Yes. When it opened the Honolulu circuit, they had a seniority list at that time which permitted me to bid, and I obtained the Honolulu circuit. At that time the circuit paid $160 base pay, 10 cents an hour bonus, and 15 cents an hour bonus for overtime.
Q. Any further increases?
A. None.
Q. You mentioned having operated the Honolulu circuit. What other circuits did you operate?
A. Prior to that time I worked all over the office, and at the F. X. office—that is, the stock exchange.
Q. Did you handle any of the foreign circuits?
A. Honolulu, Manila.
Q. Any others?
A. That is all.

Q. Did you handle the New York circuit?

A. No.

679 Trial Examiner EICKHOFF. What was your rate of pay when you last worked for Mackay?

The WITNESS. $180.

By Mr. EDISES:

Q. Are you a member of the ARTA?

A. Yes.

Q. Were you a charter member?

A. Yes.

Q. What——

Examination by Trial Examiner EICKHOFF:

Q. Just a minute! A charter member of the Local or the National?

A. Of the point to point Local.

Q. Point to point Local?

A. Yes.

Q. Which means that you became a member sometime in 1934?

A. Yes; in the fore part of 1934.

By Mr. EDISES:

Q. Did you participate in the organization of the point to point Local?

A. Yes; I was very active.

Q. What part did you play in the organization of it?

Mr. MERRICK. I am not sure—I don't know whether the Examiner's general ruling, overruling our objections to this line of testimony of prior witnesses, is understood to apply to each witness and that we have to make it each time. Therefore, I object to all of the

680 testimony of this witness as to his connection with the union, his activities in the union, unless it is shown that the respondent in this proceeding had knowledge of those activities. I cannot see any other possible relevancy to the issues in the case.

Trial Examiner EICKHOFF. Objection overruled.

By Mr. EDISES:

Q. What did you do in connection with the organization of the point to point local?

A. I was in favor of it, and I urged others to join.

Q. Did you attend the first organizational meeting?

A. Yes.

Q. When was that?

A. I cannot recall—it is either along in January of 1933, or December 1933, or January 1934, somewhere along there.

Q. And were you an officer of the local at any time?

A. Well, after the point to point had finally set up its division of the local, why I was elected to what was then termed the Grievance Committee.

Q. And was the Grievance Committee reorganized in the early part of 1934?

A. Yes.

Q. Were you a member of the reorganized committee?

A. Yes; I was re-elected to the committee.

Q. Did you hold any other office, or were you a member of any other committees?

A. Only during the time of Mr. Salisbury's absence. When
681 he went back to New York to negotiate the point to point agreement, as it had then been drawn up, he appointed me to serve in his place during his absence.

Q. What place was that?

A. As chairman of the point to point local.

Q. Have you had any part in, as a member of a committee, negotiations with Mackay Radio?

A. Yes.

Q. When was the first time that you took part in any negotiations?

A. The first time was with Mr. Tuel in Mr. Rodman's office, about June 1934.

Examination by Trial Examiner EICKHOFF:

Q. Who else was present?

A. I remember Captain Dodd was present; Mr. Rodman was present; Mr. Tuel was present; Mr. Salisbury was present; Mr. Palmer, Mr. Rone, Mr. Loudermilk, myself, and Mr. Mathison, who, at that time, was coast delegate of the ARTA.

Q. What was the purpose of the meeting?

A. The meeting, as I remember it, was held at Mr. Tuel's request. I believe Mr. Mathison, either at the meeting or outside of the meeting, told me that Mr. Tuel had come out to the Coast and——

Q. (Interrupting.) Never mind that. You didn't know the purpose before you attended the meeting?

682 A. Yes; I had understood that it was to be a negotiations meeting.

Q. To negotiate what?

A. To negotiate with Mr. Tuel.

By Mr. EDISES:

Q. Over what?

A. Over the conditions, working conditions, and so forth, that at that time existed in the H. B.

Q. What was said and done at that meeting?

Mr. MERRICK. Is this going to be merely repetition and corroborative of the testimony of the previous witnesses? I am quite sure that all three testified to this meeting. Does the Examiner wish to permit a repetition of it again?

Trial Examiner EICKHOFF. Do you offer any stipulation?

Mr. MERRICK. I would like to have the attorney for the Board state first whether he intends to produce, through this witness, any

other or different testimony from that that has been given by the others.

Mr. EDISES. This witness' testimony, I believe, will be substantially similar to that of the others. The only reason why I asked him these questions, or intend to ask them, is because it is necessary to establish the facts individually as regards each of these five men. If you are willing to stipulate that the meeting took place, and that this man would give similar testimony to that of the previous witnesses, I am agreeable to that.

693 Mr. MERRICK. Why don't you ask him the simple question of whether or not he has heard the testimony of these previous witnesses—he has been in the courtroom all the time—and if he has anything to add to it, or wishes to change anything.

Trial Examiner EICKHOFF. Is that agreeable to you?

Mr. MERRICK. Yes.

Examination by Trial Examiner EICKHOFF:

Q. Did you hear the testimony of the three previous witnesses regarding this particular meeting?

A. Yes, sir.

Q. Would your testimony be the same concerning it?

A. Substantially the same; yes, sir.

Q. What variations would there be, if any? In other words, how would you testimony differ, if at all, or what would you add?

A. I couldn't answer that other than I am under oath and I will state the case as I remember it; that is, there might be some little differences creep in that way.

Q. You mean there might be some small detail?

A. Yes.

Q. But in the mean your testimony would be the same?

A. Yes, sir.

Mr. EDISES. Is that satisfactory to you, Mr. Merrick?

Mr. MERRICK. I suggested that line of questioning, so

684 naturally I don't object to it.

Mr. EDISES. Fine.

Trial Examiner EICKHOFF. And then you stipulate that the witness would give substantially the same testimony as the earlier witnesses, regarding this meeting, if asked the same questions?

Mr. MERRICK. I am perfectly willing to stipulate.

By Mr. EDISES:

Q. Did you take part in any further negotiations with the company?

A. Yes.

Q. When and where?

A. September 13, 1935.

Mr. EDISES. Is Mr. Merrick willing to make the same stipulation?

Trial Examiner EICKHOFF. Let's identify that a little further.

By Mr. EDISES:

Q. Who was present at that meeting?

A. This meeting was held in Mr. Russ' office.

Q. Who were present?

A. No one was present but Mr. Russ, Mr. Rathborne, and myself.

Q. Then this is a different meeting than the one which has been previously testified to?

A. This is a meeting, I believe, that led up to the other meeting.

685 Q. What was the purpose of it?

Mr. MERRICK. Have you the date of that?

Mr. EDISES. September 13.

Trial Examiner EICKHOFF. 1935.

The WITNESS. 1935.

Mr. MERRICK. The time?

By Mr. EDISES:

Q. Approximately what time was the meeting?

A. The meeting was approximately 10 o'clock a. m.

Q. What was the purpose of this meeting? Why was it called?

A. That morning about 9 o'clock I received a telegram from Mr. Salisbury, who was back in New York, informing me that Mackay Radio——

Mr. MERRICK. (Interrupting.) Is that telegram available?

Trial Examiner EICKHOFF. Have you that telegram?

The WITNESS. I believe it is here. If it isn't, it is in the minutes of one of these meetings, a copy of the telegram, because I remember the telegram was read into the minutes of the meeting held in the evening of September 13.

Trial Examiner EICKHOFF. It is not in your personal possession?

The WITNESS. No.

Trial Examiner EICKHOFF. Does counsel have it?

686 Mr. EDISES. I am not sure. It may be in the several telegrams here.

Mr. MERRICK. You have the minutes of September 13. He said it was in the minutes.

Trial Examiner EICKHOFF. He said in some of the minutes.

Mr. MERRICK. He said in the minutes of the meeting of that night. Why can't we have them?

The WITNESS. It has already been introduced in evidence.

Trial Examiner EICKHOFF. Would you be willing to accept the minutes as secondary evidence of what was in the telegram?

Mr. MERRICK. If the witness will state he was reasonably sure that that telegram was inserted in the minutes is the telegram to which he refers. I would like to get as near as we can to something approaching accuracy in the testimony.

Mr. EDISES. I think we may possibly have the telegram itself, and I have no objection to showing it to counsel.

Mr. MERRICK. I suggest that the Examiner advise counsel for the Board that in preparing his case he should be ready, when he asks

a witness concerning the contents of a document, to produce the document. I don't see any reason why these delays should take place continuously.

Mr. EDISES. I didn't ask a question concerning the contents of the telegram.

Mr. MERRICK. He started to testify about it.

687 Trial Examiner EICKHOFF. Let's not have this by-play between counsel. If you have anything to say, address me, and let's move ahead.

Mr. MERRICK. I did.

Mr. EDISES. That telegram is not available, as far as I am concerned. It may be some place, but not among those submitted to me.

Trial Examiner EICKHOFF. Are these minutes available?

Mr. EDISES. The minutes have been turned over to Mr. Merrick.

Trial Examiner EICKHOFF. Do you attach any importance to the contents of the telegram, or to the telegram itself? If not, we can strike out the testimony regarding the telegram and go on to something else. I don't see that the telegram is of any importance.

By Mr. EDISES:

Q. Will you proceed with your account of the meeting that you just started talking about?

A. Yes.

Q. What was said and done?

A. At that time Mr. Rathborne tried to obtain a verbal agreement and——

Mr. MERRICK. (Interrupting.) I object to this testimony. He asked the question, what happened at the meeting, and this isn't responsive.

688 Trial Examiner EICKHOFF. Let me explain to the witness, that when you say somebody tried to do something, that is your conclusion. If you say what he said, and what was said in response, then you are stating the facts.

The WITNESS. I cannot do that.

Trial Examiner EICKHOFF. Just the substance of it, without saying that he was trying to accomplish this or that, or in any way giving your opinion of what he was doing. Just give the substance of the conversation back and forth. Is that clear?

The WITNESS. Yes. He got absolutely no satisfaction there, other than——

Mr. MERRICK. (Interrupting.) I object to that.

By Mr. EDISES:

Q. Just don't characterize what took place there. Just tell us what this person said and that person said.

Mr. MERRICK. Are you talking about a meeting at 10 o'clock, as I understand it, in Mr. Russ' office?

Mr. EDISES. Yes, correct.

Trial Examiner EICKHOFF. As near as you can, relate what took place. That is, what was said and done.

The WITNESS. Mr. Rathborne informed Mr. Russ that the RMC a day or two previous to that time, had signed an agreement with the ARTA affecting some 1,100 steamships, and that he felt certain that the Mackay Radio would similarly sign a similar agreement,
689 and that that agreement had already been presented that morning to the Mackay Radio in New York.

By Mr. EDISES:

Q. What else was said and done?

A. After some lengthly discussion back and forth, I also informed Mr. Russ of the point to point situation which developed at that time; that these two agreements had been presented to the Mackay Radio Company in New York that morning simultaneously, and that the two divisions of the ARTA were that evening going to decide the question of joint action on those two agreements.

Mr. Russ said that he had no authority to act in the matter; that he was merely an employee of the company, but that he would immediately take the matter up with Mr. Rodman.

Q. Anything further said or done?

A. No.

Q. What did you do then? Did you leave?

A. I went back to my job.

Q. And did you attend any other meeting on that day?

Examination by Trial Examiner EICKHOFF:

Q. Just a minutes. Now, to come back to the purpose of the meeting, you went there to inform Mr. Russ or Rust?

A. Russ—R-u-s-s.

Q. Mr. Russ—to inform Mr. Russ that these agreements had been presented to the company?

A. Yes.

690 Q. And did you call upon him to take any action?

A. Only, as I started to say in the beginning, that he tried to get a verbal agreement.

Q. You tried to get one?

A. Mr. Rathborne attempted or tried to get Mr. Russ to take a different attitude toward ARTA than he had previous to this time.

Q. When you went to the meeting you had something definite in mind, some proposition that you were going to make, or something that you were going to ask for?

A. That was it.

Q. What was that?

A. That was it.

Q. That he approve these agreements?

A. No; to take a different attitude toward the ARTA.

Q. You mean you wanted him to be sympathetic toward these agreements?

A. No; sympathetic, not sympathetic toward the agreements—but in place of chasing all over the United States rounding up scabs, to

hire operators through the union hall. There were 50 or 60 of them down at the beach then.

Q. In other words, you had a definite complaint there to make?

A. Yes.

Q. That you wanted him to employ your men in preference to
691 scabs?

A. Yes.

Q. That was one thing.

A. Yes.

Q. Did you ask him for anything else?

A. No.

Q. Then, the purpose of the meeting was, as I now understand it, to inform him that these agreements had been or were being submitted to the company, and also to ask him to give preference to union men in employing operators?

A.–Yes. Inasmuch as the RMCA had signed the agreement already affecting some 1,100 steamships, that we now expected Mr. Russ to take a different attitude also toward the ARTA and show a little more sympathy towards the union men than he had in the past.

Q. Were you there on behalf of the point to point group or the marine group?

A. I was there on behalf of the point to point group.

Q. On behalf of the point to point group did you have any complaints to make?

A. None at all to him, no; merely to state that the joint action was pending and it was going to be a vote, there was going to be a vote taken on the joint action.

Q. And each group was going to back up the other?

692–3 A. Yes. In other words, he didn't have to take Mr. Rathborne's word for what was going on in the point to point division.

Q. But Mr. Rathborne was there to insist that the union men be employed in preference to non-union men, on behalf of the maritime or marine group?

A. That is correct.

Mr. MERRICK. I would like, Mr. Examiner, to have this witness questioned as to who Mr. Russ was.

Mr. EDISES. I believe Mr. Russ has been identified previously as the marine superintendent, has he not?

By Trial Examiner EICKHOFF:

Q. Do you know what Mr. Russ' capacity was?

A. I don't know what his official title was, or is, if any, but he has charge of hiring and firing marine operators for the Mackay Radio.

Q. Did he at that time?

A. Yes, sir.

Q. That was within your personal knowledge?

A. Yes, sir.

By Mr. EDISES:

Q. Did Mr. Russ make any promises or tell you anything, tell you that he would do anything in regard to your requests?

A. Yes; that he would take the matter up with some higher authority.

Trial Examiner EICKHOFF. But he made no commitment at
694 that time?

The WITNESS. No.

By Mr. EDISES:

Q. And did you report on the result of your negotiations to the Local?

A. Yes.

Q. When did you make the report?

A. That night at the regular meeting, or the meeting that was called that evening.

Q. Were you present at any other meeting on September 13?

A. Yes, sir.

Mr. MERRICK. Just a minute! Before you answer that, let's hear the question.

By Mr. EDISES:

Q. Any other meeting with the company officials on September 13.

A. Yes.

Q. Who was present at that meeting?

A. This meeting was held in Mr. Rodman's office around 3 o'clock or 3:15 in the afternoon. Mr. Jorgensen, Traffic Manager, informed me that I would be called in to Mr. Rodman's office for a conference and if I cared to, why to get my coat and slick myself up a little bit and prepare for going in. At 3:30 he informed me that they wanted me to come in.

I went in Mr, Rodman's office. In the meantime——

Trial Examiner EICKHOFF. (Interrupting.) Who else was
695 there?

The WITNESS. Mr. Stone was there, Mr. Rodman, Mr. Russ, Mr. Rathborne, and Mr. Asplund, and Mr. Horne.

By Mr. EDISES:

Q. What was the purpose of this meeting?

Examination by Trial Examiner EICKHOFF:

Q. Was Mr. Rone there?

A. Not at that time.

Q. Mr. Loudermilk?

A. Not at that time.

Q. We have had no testimony concerning this meeting before?

A. Yes.

Mr. EDISES. I believe there has been testimony in regard to this meeting.

Trial Examiner EICKHOFF. Who gave that?

Mr. EDISES. Mr. Loudermilk. Mr. Rone was present, and Mr. Palmer, I believe, was present at the meeting, too.

By Trial Examiner EICKHOFF:

Q. Was Mr. Rone present?

A. Yes; but not at that time. That was 3:30.

Trial Examiner EICKHOFF. Oh.

By Mr. EDISES:

Q. When did Mr. Rone come to the meeting?

A. At my request he and Mr. Palmer came in at 4 o'clock when they got off duty.

Q. You were present at 3:30?

A. When I was called in.

Q. And who else was present when you got there at 3:30?

696 Have you testified to all the persons who were present?

A. All that I can remember.

Q. Well, what was said and done while you were at the meeting, and before Mr. Rone and Mr. Palmer came in?

A. Mr. Stone raised about half way out of his chair and said, "Jesus Christ, you fellows have caught me here with my pants down." [Witness pounding on desk with his hand.]

Q. Was this said before Mr. Rone and Mr. Palmer arrived?

A. Yes.

Q. Did he repeat that?

A. I believe he did.

Q. What else was said and done at the meeting before Mr. Rone and Mr. Palmer arrived?

A. More or less—they were discussing the marine agreement that had been signed by the RMCA and Mr. Stone asked Mr. Rathborne if he had a copy of that agreement, as it was signed. Mr. Rathborne didn't have a copy as it was signed. Mr. Stone apparently had had the agreement——

Mr. MERRICK. (Interrupting.) I object to the statements about "apparently."

By Mr. EDISES:

Q. Tell us what was said and done.

A. Mr. Stone had a copy of the agreement as it had been telegraphed him from New York.

Q. What agreement?

A. The marine agreement, the agreement signed by the

697 RMCA. They went into a lengthy discussion on that. Then when Mr. Rone and Mr. Palmer came in, Mr. Stone went through the same impressive——

Trial Examiner EICKHOFF. (Interrupting.) Just say what he did.

A. (Continuing.) He went through the same thing to impress them with the fact that he had been caught with his pants down and an unfair advantage was being taken of him.

By Mr. EDISES:

Q. Have you heard the testimony by Mr. Rone and Mr. Palmer in regard to what happened at the meeting of September 13 after they got there?

A. Yes.

Q. And would your testimony be the same as theirs in regard to what occurred at the meeting?

A. It would be, substantially; yes.

Trial Examiner EICKHOFF. If the same questions were asked you?

The WITNESS. Yes.

Trial Examiner EICKHOFF. Would you have any additions to make to their testimony?

The WITNESS. None, no.

Mr. EDISES. Are you agreeable to a stipulation, Mr. Merrick, to the effect that his testimony would be the same, if the same questions were asked him, as that testified by the other two witnesses?

698 Trial Examiner EICKHOFF. We will take a ten minute recess. I will ask every one to be prompt in returning.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Mr. MERRICK. I am willing to stipulate to that.

Trial Examiner EICKHOFF. As to the balance of the meeting?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. It is so stipulated.

By Mr. EDISES:

Q. Were you present at the union hall at any time on October 4, 1935?

Trial Examiner EICKHOFF. What day of the week was that?

Mr. EDISES. That was Friday, I believe.

A. Yes.

By Mr. EDISES:

Q. And how long were you at the hall?

A. From about 7:30 to around 11:45 p. m.

Q. 7:30 p. m.?

A. Yes.

Q. And when you left the union hall that night was the strike still on or had it been called off?

Trial Examiner EICKHOFF. What date was that?

Mr. EDISES. Wait a minute! I beg your pardon. I was thinking of October 17.

By Mr. EDISES:

699 Q. On October 4, 1935, when you left the union hall had you been appointed to any office in connection with the strike, or any position?

A. None that I can recall, other than the one already held as the chairman of the point to point local.

Q. Were you a strike captain?

Trial Examiner EICKHOFF. Just a minute! That is October 4, is it?

Mr. EDISES. October 4; that is, I am through with that and I am asking him now whether he was a strike captain.

Trial Examiner EICKHOFF. Subsequently?

Mr. EDISES. Yes.

By Mr. EDISES:

Q. Were you appointed a strike captain?

A. No; that was hardly necessary. I was chairman and I really had authority over the strike captains.

Q. You were on the picket line—were you on the picket line at all during the strike?

A. Yes.

Q. How many days were you on the picket line?

A. I was on at various times every day of the strike.

Q. Were you present on Monday, October 7, at the union hall at any time?

A. Yes.

Q. When did you leave the union hall on Monday, October 7?

Trial Examiner EICKHOFF. Are his comings and goings of any importance there?

700 Mr. EDISES. In this particular connection it is.

Trial Examiner EICKHOFF. Why not ask him if he attended a meeting there, or participated in that and other things? Even lead him a little—it might not be objectionable—so we will get along.

Mr. EDISES. The only point I want to bring out is that the strike, when he left, the strike was still in existence, and that he had not received any notice of any calling off of the strike.

Mr. MERRICK. I object to the statement.

Mr. EDISES. The Examiner asked the reason for asking the question.

By Mr. EDISES:

Q. When you left the union hall Monday, October 7, was the strike still on?

A. Yes.

Trial Examiner EICKHOFF. As far as you knew.

The WITNESS. Yes.

By Mr. EDISES:

Q. Had anything been said at the meeting or at the hall that day about calling it off?

A. No.

Trial Examiner EICKHOFF. That you know of.

The WITNESS. Not that I know of.

By Mr. EDISES:

Q. Where did you go when you left the union hall that night?

A. I went to my home in Mill Valley.

701 Q. Did you hear, or did anybody tell you, about a meeting which was to be held at the Hotel Bellevue early Tuesday morning?

A. Yes, Mr. Ludlam.

Examination by Trial Examiner EICKHOFF:

Q. Who is he?

A. An employee of Mackay Radio, and also a member of the ARTA.

Q. Of the Local?

A. Yes.

Q. Point to point group?

A. Yes. He called me on the phone from the East Bay and said he had been informed that there was to be a meeting at the Bellevue Hotel and wanted to know what he should do about it, and wanted to know if I knew who called the meeting. He said he understood that there was to be a meeting at the union hall at 10 o'clock the following morning, the same as usual.

I said, "That is correct, as far as I know."

He said, "What shall I do?"

I said, "I don't know. Probably the best thing to do is to go over and find out what it is all about."

So when that conversation terminated I called back to the Bellevue Hotel.

By Mr. EDISES:

Q. Who did you ask for?

702 A. I asked if there was a meeting of any kind going on around there that he knew of, and he said, "Yes."

The next thing I know I had Burtz on the telephone and asked Burtz if they were having a meeting there.

Mr. MERRICK. May we have the time fixed?

Trial Examiner EICKHOFF. This was approximately what hour?

A. I had already been in bed and asleep when I got the phone call from Mr. Ludlam. It was approximately 1 o'clock or 1:30 a. m.; might have been a little before. I don't know. I didn't pay particular notice of the time.

By Mr. EDISES:

Q. Will you state the conversation with Mr. Burtz?

A. I asked Burtz if they were having a meeting there.

Mr. MERRICK. I object to this as being irrelevant and immaterial.

Trial Examiner EICKHOFF. I am inclined to think it is.

Mr. EDISES. On the contrary, it is extremely material that he tell what took place during the telephone conversation.

Trial Examiner EICKHOFF. I will see if it is. I will allow the question.

By Mr. EDISES:

Q. Go ahead and tell what was said during that conversation.

A. He said they were going to have a meeting, and I asked
703 him who called the meeting, and he said as far as he knew Bob had called it.

I asked him what they intended to do at the meeting. He said, well, he didn't know exactly.

Q. Go ahead.

A. I said, "Is Bob Hatch there?" And after a minute or so hesitation, why, he said he didn't see him around at the present time. I said, "All right, Burtz."

So I scented what was coming off.

Q. You what?

A. I anticipated what was coming off.

Mr. MERRICK. I move that be stricken out and move that conversation be stricken. It is solely for the purpose of keeping this record within reasonable limits, if possible.

Trial Examiner EICKHOFF. The last question and answer may be stricken of that telephone conversation with Mr. Burtz.

Mr. MERRICK. You are leaving the telephone conversation in?

Trial Examiner EICKHOFF. I think the fact that Burtz told this witness that Hatch had called the meeting may be pertinent.

Mr. MERRICK. You are admitting it on the ground that hearsay is of evidentiary value?

704. Trial Examiner EICKHOFF. Yes, may have some evidentiary value.

By Mr. EDISES:

Q. Go ahead. Did you say anything further to Burtz at that time?

A. No. After 15 or 20 minutes, during which time I called on Sam York at home—I knew he had no telephone—and I had him come over to my place, and I again called the Bellevue Hotel. This time I got Mr. Hatch on the telephone.

Q. What was said in this conversation?

A. I asked Mr. Hatch what kind of a meeting it was, and he said it was a meeting of the Mackay employees, or H. B. employees. I said, "Is Sam York permitted to attend?"

He said, "Yes."

I said, "Is Mr. Hoxie permitted to attend?"

He said, "Yes."

These men both live across the Bay in Marin County. Those were the only two in the office, outside of myself, that were living there at that time.

I says, "Just what do you intend to do at this meeting, Bob?"

He says, "Well, we are going to have a vote."

I says, "A vote on what?"

He said, "Well, we are going to have a vote on whether we want to return to work or not."

I says, "Am I permitted to attend this meeting?"

He said, "No."

705 I says, "If I come over anyhow, will I be permitted to have a vote?

He said, "No."

I says, "Why?"

He says, "Well, you are the ARTA. This is a Mackay employees' meeting."

Q. Anything further said?

A. I fainted.

Q. You say you fainted?

A. Yes, sir.

Q. Was Mr. Hatch a member of the ARTA?

Trial Examiner EICKHOFF. You mean you actually fainted?

The WITNESS. Yes.

By Mr. EDISES:

Q. Was Mr. Hatch a member of the ARTA local at that time?

A. Yes.

Q. Did you apply for work the next day?

A. I was physically unable to.

Q. When did you re-apply for work?

A. The following day.

Q. And what was said and done at that time?

A. Mr. Jorgensen said that——

Examination by Trial Examiner EICKHOFF:

Q. Did you go to Mr. Jorgensen's office?

706 A. Yes; I did.

Q. About what time?

A. It was about 10 a. m., that morning, the following morning.

Q. Was any one present besides the two of you?

A. The office is open, just like this here. His office would be similar to this here, and the operating room out there [indicating]. I had a short conversation with Mr. Jorgensen.

Q. To what effect?

A. To the effect that I could file application for reemployment and an application for reinstatement and to the effect that he personally would approve of it, that is, would pass favorably on my papers.

Q. Was that the full extent of your conversation?

A. That was all.

By Mr. EDISES:

Q. Did you follow up your application in any way?

A. Yes. I was pretty much under the weather, but the following day, I don't know what time it was, I called Captain Dodd's office. Captain Dodd was not in at the time, but his secretary said that if I would leave my phone number that Captain Dodd would call.

Q. Did he call?

A. Yes; the following day.

707 Q. About what time?

A. 9 or 10 o'clock in the morning; maybe 11 o'clock; sometime during the forenoon he did call.

Q. What was his conversation?

A. He said, inasmuch as I didn't get back to work with the rest of them, my job had been filled, but that he had no objection to my returning to work when a vacancy occurred.

Q. I show you this document headed "To Mr. A. C. Jorgensen, Traffic Manager, H. B., from L. K. Bash, San Francisco, California, October 9, 1935," and ask you if this is your signature?

A. [Examining document.] Yes.

Q. And is this the personal history record you filed at that time?

A. [Examining personal history record.] I believe it is.

Q. And did you see this typewritten material underneath your signature before?

A. No; there was none there.

Mr. EDISES. I offer this in evidence as Board's Exhibit No. 6, consisting of the personal history record, one page; the document, one page document with the signature of Mr. Bash upon it.

And I presume, Mr. Merrick, that you want to offer the other papers.

708 Mr. MERRICK. I cannot offer them at this time, but I suggest they be admitted on the same conditions that the Examiner admitted the previous applications.

Mr. EDISES. All right. The personal history record will be one paper; the paper with the signature, second; and the other two documents, headed "Inter-office Memorandum," one to Mr. H. L. Rodman from E. H. Dodd, and the other to Mr. Ellery W. Stone from H. L. Rodman.

Trial Examiner EICKHOFF. It is understood that those last two mentioned sheets will be proved later?

Is there any memo on the first two which has yet to be established?

Mr. EDISES. There is one on the first—on the second page there is one to Captain Dodd from A. C. Jorgensen, signed A. C. Jorgensen, which this witness cannot identify.

Trial Examiner EICKHOFF. Very well, it will be admitted with the exception of those two sheets, and the one memo which will be later established.

Mr. MERRICK. I understood that the others you admitted subject to the proper identification?

Trial Examiner EICKHOFF. Yes. That is what I intend to do now.

Mr. MERRICK. So they stay as one exhibit.

(The documents referred to were received in evidence and marked "Board's Exhibit No. 6, Witness Bash.")

709 By Mr. EDISES:

Q. Have you now related all of the conversations or interviews that you had with company officials after your failure to be re-employed?

A. I called Mr. Jorgensen once or twice on the phone. It was more or less of a personal nature. I asked him how the application was getting along at that time.

Q. If you are offered your job back, will you take it, Mr. Bash?

A. Yes.

Mr. EDISES. That is all.

Examination by Trial Examiner EICKHOFF:

Q. Are you employed at the present time?

A. I am working on a temporary job.

Q. What is the nature of that job?

A. It is radio work.

Q. At any fixed compensation?

A. $150 a month; just one month of it.

Q. You have been engaged for one month of work at $150 a month?

A. Yes, sir.

Trial Examiner EICKHOFF. Do you want to go into the question of this witness' earnings?

Mr. EDISES. Well, yes.

By Trial Examiner EICKHOFF:

Q How much have you earned since the time that you left Mackay?

710 A. It would be pretty close to $200.

Q. Approximately $200?

A. Yes, sir.

Q. When you will have completed this temporary work there will be additional compensation?

A. Yes; possibly a week yet of that.

Q. Up to today you have earned approximately $200?

A. Yes, sir.

Trial Examiner EICKHOFF. Are you through with the witness?

Mr. EDISES. That is all.

Cross examination by Mr. MERRICK:

Q. Mr. Bash, what is the reorganization that you mentioned of the Grievance Committee in February 1935 of the union? What does that mean?

A. It was—at the time when the then secretary of the ARTA was dismissed and then a new secretary was installed.

Q. What were the circumstances in connection with the dismissal of the previous secretary?

A. I know absolutely nothing at all about it.

Q. You weren't active in the union at that time?

A. No.

Q. Didn't you testify that you were a member of the Grievance Committee both before and after the reorganization?

711 A. Yes.

Q. Isn't that one of the most active committees of the union?

A. No.

Q. Who was the secretary prior to the reorganization?
A. Mr. Volney G. Mathison.
Q. And who took his place?
A. Well, Mr. Rathborne is the present secretary.
Q. Did he take his place?
A. I suppose he did; yes.
Q. Was he elected?
A. I don't know.
Q. Are you still a member of the Grievance Committee?
A. Yes.
Q. You have been continually a member since what time?
A. Sometime early in 1934.
Q. You say that when Mr. Salisbury went to New York that you became chairman of the local?
A. I was appointed chairman, I said.
Q. Was that Mr. Salisbury's position prior to that time, as chairman?
A. Yes.
Q. Was he elected?
A. Yes.
Q. At a regular meeting?
712 A. Yes.
Q. For how long a time was he elected?
A. I don't know.
Q. Did you elect a vice chairman at the time Mr. Salisbury was elected chairman?
A. No.
Q. You did not?
A. Not that I know of.
Q. Is there any provision in your by-laws, or constitution giving one officer the power to select a substitute for himself?
A. I believe Mr. Salisbury had that power.
Q. Is there a provision to that effect in your by-laws or constitution?
A. I believe there is. I am not certain.
Q. Have you ever seen it?
A. I have never seen it; no.
Q. What evidence did you have at the time you accepted this position then that Mr. Salisbury had the right to appoint you to it?
A. Well, I stipulated that he had the right to.
Q. You did what?
A. I stipulated that he had the right to.
Trial Examiner EICKHOFF. You mean you just accepted it, is that what you mean?
713 The WITNESS. That is what I mean. I didn't question his right to do it.

By Mr. MERRICK:

Q. You have no other knowledge of it than the mere fact that Mr. Salisbury asked you to take that position?

A. No.

Q. You testified that this meeting in Mr. Russ' office on the morning of September 13 was for the purpose of discussing the marine agreement; is that correct?

A. Yes.

Q. You are not a member of the marine division of your local, are you?

A. No.

Q. You are not chairman of the marine division of the local?

A. No.

Q. What was your interest in that meeting?

A. Mr. Rathborne wished me personally to state what had taken place in New York.

Q. State what?

A. State what had taken place that morning in New York.

Q. He wanted you to state it?

A. Yes.

Q. Had you knowledge about what had taken place there that Mr. Rathborne had not?

714 A. No.

Q. That is the only reason that Mr. Rathborne asked you to be present?

A. I don't know.

Q. You don't know what you were there for, then?

A. I was there in the interest of the point to point group.

Q. What was the interest of the point to point division in the marine agreement?

A. The interest of the point to point in the marine agreement was to put a little pressure on Mr. Stone.

Q. Isn't it a fact that the two divisions of your local were pretty closely—that is, worked closely together and one division cooperated in bringing pressure to bear in assisting the other?

A. I would say that they get along right brotherly.

Q. But you say that one of the things that one division does is to help to bring pressure bear to help the other division?

A. Understand that this was now to both our interests.

Q. I am not denying, saying whether it was or was not to your interest, but that was the reason you were there, to bolster the marine people by showing that their position had the support of the point to point people?

A. Exactly; yes.

Q. You have heard about the boycott that has been declared

715 against Mackay Radio?

A. Yes.

Q. Is the point to point division assisting the marine division in carrying out that boycott?

A. I don't know.

Q. Do you think it is to their interest to do so?

Mr. EDISES. I object to that question as irrelevant and asking for the opinion of the witness.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. You say that it was to the interest of the point to point people to bring pressure to bear on the company to force it to sign the marine agreement. You testified to that; haven't you?

A. Well, I will put it this way——

Q. (Interrupting.) Answer the question.

A. Yes; I testified.

Q. Isn't it equally to the interest of the point to point people to take part in assisting the marine division by furthering this boycott?

A. I wouldn't say that.

Q. Why do you draw that distinction, Mr. Bash?

A. Because the point to point men are more or less in the position where they cannot consistently do it.

Q. Oh, but one of the fundamental principles of your union is consistency.

716 Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. Does the Examiner bear in mind this is cross examination?

By Mr. MERRICK:

Q. In what respect do you consider it inconsistent, Mr. Bash?

Mr. EDISES. Same objection, Mr. Examiner.

Trial Examiner EICKHOFF. The question is allowed.

A. A radio operator, if he is working for a company, he cannot very well boycott that company. A marine operator on board a steamship; it is entirely a different matter. There he has more or less the right to direct telegrams one way or another.

By Mr. MERRICK:

Q. You say more or less the right?

A. Yes.

Q. What do you have in mind there?

A. I have in mind this: That on certain steamships, certain companies, there is no provision or no arrangement is made to route the telegrams via any particular route.

Q. You mean to say that where there are no obligations on the part of a steamship company that the operator is free to send it where he likes?

A. Yes.

Q. Who assigns these operators on board the ships to their positions?

717 A. I don't know.

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. It has been answered, and he says he doesn't know.

By Mr. MERRICK:

Q. What connection, as you understand it, has the Mackay Radio Company to the operation of radio ships?

Mr. EDISES. Object to that question. I fail to see its relevancy.

Trial Examiner EICKHOFF. Overruled.

A. As I understand it, the Mackay Radio merely has some contracts with some steamship lines to furnish radio equipment on these ships.

By Mr. MERRICK:

Q. Does it furnish the operators?

A. To some extent; yes.

Q. Where it furnishes the equipment and the operators, is it your opinion that the operators, nevertheless, are free to send messages to whatever station they please?

Mr. EDISES. I object to that——

A. (Interrupting.) Unless the sender of the telegram directs——

Mr. EDISES. (Interrupting.) Just a minute! I object to the question as calling for the conclusion of the witness as to something he is not personally able to answer.

Trial Examiner EICKHOFF. He may know something about
718 the regulations or the practice, which would be pertinent.

Mr. MERRICK. I would be glad to exclude questions of this kind if counsel for the Board will agree to exclude questions asking a witness for information not within his personal knowledge.

Mr. EDISES. I tried to keep out of opinion questions.

Mr. MERRICK. I haven't seen any signs of it.

Will you read the question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.)

A. I don't know.

By Mr. MERRICK:

Q. In the boycott instructions and literature that has been put out by your organization, has any distinction been made between the operators on board ships where Mackay Radio equipment has been installed, and the operators on board ships where such equipment has not been installed?

Mr. EDISES. I object to that question as too vague and indefinite. He hasn't identified, in the first place, the material that he is referring to; and in the second place, he is assuming something that is not in evidence, namely, that such material has been put out.

Trial Examiner EICKHOFF. Read the question, Mr. Reporter.
719 (The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

Q. Are you familiar with the literature that has been put out by your organization on the subject of this boycott?

Mr. EDISES. I object—he doesn't identify the organization, whether it is the Local or the National. There are several organizations.

Trial Examiner EICKHOFF. Will you qualify your question in that respect; identify the organization.

Mr. MERRICK. His organization is the American Radio Telegraphists' Association. I am asking him about the boycott literature put out by this organization, whether it is with the approval of the National headquarters or Local, I cannot tell. If he wants to qualify his answer, that is up to him it seems to me.

Trial Examiner EICKHOFF. Well, he may belong to several organizations.

Mr. MERRICK. I am only referring to ARTA.

By Mr. MERRICK:

Q. Are you familiar with the literature that has been put out in connection with the boycott, by either your Local or the National, or both?

A. Our Local put out no literature, I am sure, regarding the boycott that I know of; at least I have not seen any.

Q. Mr. Mervyn Rathborne is acting secretary of the San
720 Francisco Local No. 3, or was on October 24, 1935?

A. Yes.

[Handing mimeographed sheet of paper to the witness for examination.]

Trial Examiner EICKHOFF. First, show that to Mr. Edises.

Mr. MERRICK. He has seen it.

By Mr. MERRICK:

Q. Have you ever seen that document before, or a copy of it, or what appears to be somewhat similar to it?

A. I have never seen it before.

Q. Were you in San Francisco about this time, October 24, 1935?

A. Yes.

Q. Have you been going more or less frequently during the period subsequent to October 24, to your union hall?

A. Yes.

Q. And you never saw anything of this kind?

A. I never saw it.

Q. I show you another mimeographed sheet entitled "Boycott Mackay Radio," which at the bottom says, "Issued by Group of members of the ARTA," and I will ask you whether you have ever seen this before?

A. [Examining mimeographed sheet.] Yes; I did see that.

Q. Do you know who issued this?

721 A. No; I don't.

Q. Where did you see this before?

A. Saw it down at the union headquarters.

Mr. MERRICK. We offer this in evidence as Respondent's Exhibit No. 4.

Trial Examiner EICKHOFF. Let's have a little more foundation for it.

Mr. MERRICK. Do you wish to examine him?

Examination by Trial Examiner EICKHOFF:

Q. When did you see this at union headquarters?

A. I don't remember exactly. It has been some time since the strike. It was posted down there on the marine bulletin board.

Q. On the marine bulletin board?

A. Yes.

Trial Examiner EICKHOFF. Do you offer it?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. Any objection?

Mr. EDISES. I have no objection. I presume that Mr. Merrick is going to identify it, however, a little more certainly than he has thus far. There is nothing linking up the point to point group at all.

Trial Examiner EICKHOFF. It may be admitted as Respondent's Exhibit No. 4.

722 (The mimeographed sheet referred to was received in evidence and marked "Respondent's Exhibit No. 4, Witness Bash.")

By Mr. MERRICK:

Q. Were you acting chairman of the Local on October 24, 1935?

A. Well, if Mr. Salisbury hadn't got back to San Francisco I was acting chairman.

Q. Do you know when he got back?

A. Not the exact date.

Q. It is possible you were acting chairman on that date?

A. I might have been.

Q. Has your acting secretary, under your constitution and by-laws, the power and authority to send out literature over the heading of "American Radio Telegraphists' Association, San Francisco Local No. 3," without consulting the chairman of the organization, or without receiving authorization from the members of the organization?

A. I am afraid you misinterpreted the power of the chairman, the point to point chairman.

Q. Can't you answer that, whether the secretary, under your constitution and by-laws——

Trial Examiner EICKHOFF. I think unless you have shown that to be done, that it is improper cross examination.

Mr. MERRICK. I submit, Mr. Examiner, that I am entitled to ask him about this. I have submitted this to him, and

723 I am referring to the document that I previously handed to him, and asked him if he had seen it before, which he denies he had seen.

Trial Examiner EICKHOFF. Then there is no foundation for your cross examination, it seems to me. It is not in evidence yet that such a thing has been sent out. This witness has not given any testimony concerning it.

Mr. MERRICK. That is true. Am I not entitled to ask him whether this literature that purports to be the official literature of his organization is the official literature as near as he can ascertain from his knowledge of the functioning of the organization?

Trial Examiner EICKHOFF. Yes.

Mr. MERRICK. That is what I am doing.

Trial Examiner EICKHOFF. But he says he doesn't know about this.

Mr. MERRICK. I am asking him now questions as to the organization of his union, that is, what authority the acting secretary has.

Trial Examiner EICKHOFF. But that has particular reference to that which as yet it has not been shown to have been sent out.

Mr. MERRICK. I didn't mention any document in connection with my last question.

Trial Examiner EICKHOFF. I thought you did.

724 Mr. MERRICK. I was reading from it, it is true, but the question doesn't refer to it.

Trial Examiner EICKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. I will allow the question.

A. I don't know.

By Mr. MERRICK:

Q. Have you ever read your constitution and by-laws of your Local, your union?

A. Part of it.

Q. Never have read all of it?

A. No.

Q. Are you acquainted with the signature of Mr. Mervyn Rathborne?

A. Not very well.

Q. How many times have you ever seen it, to your knowledge?

A. Two or three or four times, maybe.

Q. Can you tell whether that signature appears to be his signature?

A. [Examining signature on mimeographed sheet of paper.] I wouldn't know.

Q. I show you another mimeographed sheet on a printed letter head, American Radio Telegraphists' Association, 10 Bridge

725 Street, New York, and on the left hand side, National Officers: Hoyt S. Haddock, Roy A. Pyle, and——

Trial Examiner EICKHOFF. (Interrupting.) Show it to him, please.

By Mr. MERRICK:

Q. Have you ever seen a document like that before?

A. [Examining document referred to.] No; I never saw that.

Examination by Trial Examiner EICKHOFF:

Q. Do you recognize any part of it?

A. I didn't read it all.

Q. Do you recognize the letterhead?

A. The letterhead looks genuine; yes.

Q. The other matter that is on there, other than the printed letterhead, you don't recognize?

A. No.

By Mr. MERRICK:

Q. You never took part in distributing copies of this notice to any one?

A. No.

Q. What, according to your understanding, is the purpose of the existing boycott? You are aware that there is one, are you not?

A. No.

Q. What, as you understand it, is the purpose?

A. Well, it is my opinion that the joint meeting held,
726 at the joint meeting held September 13, the marine men voted a boycott, and the point to point men voted a strike. The point to point men lost that strike. The marine men, as I understand it, have not lost the boycott.

Q. That is, you understand the boycott is by the marine division of the Mackay Radio, and that is all?

A. I don't know to what extent the marine men voted a boycott.

Q. Has the point to point division of the union voted a boycott?

A. They have voted a strike.

Q. Have they voted a boycott?

A. Not that I know of.

Q. Have they authorized any officer or representative to call a boycott?

A. Not that I know of.

Trial Examiner EICKHOFF. Mr. Merrick, is there very much more? It is 12 o'clock.

Mr. MERRICK. I have my usual questions to ask this witness.

Trial Examiner EICKHOFF. You think you can finish in five or ten minutes?

Mr. MERRICK. No, sir.

Trial Examiner EICKHOFF. About how long will it take?

Mr. MERRICK. Half an hour, possibly.

727 Trial Examiner EICKHOFF. I think we will continue the hearing until Monday morning at 10 o'clock, or would you prefer to go on for another half hour?

Off the record.

(Discussion off the record.)

Trial Examiner EICKHOFF. We will continue for another half hour before adjournment.

By Mr. MERRICK:

Q. Do you read the magazines published by your organization, which is labeled its official organ?

A. Yes.

Q. Do you remember seeing the October 1935 issue?

A. I believe I saw one.

Q. Do you remember noticing the heavy type printing on the back cover of that magazine?

A. [Examining back cover of magazine referred to.] Well, I received this magazine, but I never got around to reading it. I didn't notice that on the back. I notice it now.

Q. That is the official organ of your National Association, is it not?

A. Well, I am under oath and I couldn't swear it is. I believe it is.

Q. It says it is and you have no reason to believe it is not?

A. No.

Q. You receive it regularly as a member?

728 A. Yes.

Mr. MERRICK. I think, to save time, I would like to offer this in evidence, at least that part of it to which I have referred.

Trial Examiner EICKHOFF. We won't take just part; we will take it all.

Mr. MERRICK. Then I offer it all.

Trial Examiner EICKHOFF. Any objection?

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. It may be admitted as Respondent's Exhibit No. 5.

(The October 1935 issue of the magazine referred to was received in evidence and worked "Respondent's Exhibit No. 5, Witness Bash.")

By Mr. MERRICK:

Q. Have you read that on the back?

A. I have now; yes, sir.

Q. It doesn't state—doesn't it state that that admonition is limited to members of the marine division of your union?

Mr. EDISES. I object to that question on the ground that the writing itself is the best evidence of that.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. This is addressed to the fact that he has said that he doesn't understand much about this boycott.

Trial Examiner EICKHOFF. I understand.

By Mr. MERRICK:

729 Q. Reading that notice there, and being a member of your union, would it mean to you that request to boycott Mackay, and use the facilities of Western Union and Globe, was meant to apply to you?

Mr. EDISES. I object to that question on the ground that it is speculative and hypothetical; and, moreover, nothing has been shown to indicate these men are bound by any statement appearing in that magazine.

Trial Examiner EICKHOFF. Overruled.

A. I wouldn't be bound by that any more than I would be bound by a similar advertisement to buy clothes at the Star Outfitting Company.

By Mr. MERRICK:

Q. Is that a paid advertisement?
A. I don't know.
Q. What do you think, reading it?
A. I don't know.
Mr. EDISES. I object to that.

Examination by Trial Examiner EICKHOFF:

Q. What do you mean by your answer, Mr. Bash?
A. You mean——
Q. (Interrupting.) Explain your answer.
A. You mean that I don't know?
Q. No; that you feel that you are not bound by that.
A. If I was employed by the Mackay Radio as a point to point operator, that there was nothing I could do to boycott.
730 I couldn't boycott as it would be impossible.

By Mr. MERRICK:

Q. Couldn't you, Mr. Bash, request your friends and any business people that you were acquainted with, to use the facilities of RCA, Western Union and Globe, and not to use the facilities of the Mackay Radio and the other companies associated with the IT&T system?
A. I could if I was so inclined, I suppose.
Q. And if you understood that this was a direct request by the officers of your union to do that, would you do it?
Mr. EDISES. I object to that question on the ground that it is asking an opinion of an opinion, or an opinion of a hypothetical probability.
Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. It says here: "Boycott Mackay into reinstating its black-listed employees." Have you any idea what is referred to there as black-listed employees?
A. Yes; I have an idea it is referring to the men who didn't get back when the strike was broken up.
Q. That is the point to point men?
A. Yes.
Q. And you think that the union is calling for the marine division of the union to aid in reinstating the point to point men, but not asking the point to point men to do anything at all to bring about the reinstatement of their men?
A. I don't know what they can do.
731 Q. They could do what I suggested, and you admitted that?
A. If so inclined.
Q. They could go and solicit customers of Mackay Radio and ask them to use the facilities of some other company?
A. They could if so inclined, I suppose.
Q. You don't know whether any of them have done that?
A. I don't know.

Q. You don't know that your union has declared that Mackay Radio is unfair to organized labor and circularized all the customers of Mackay Radio asking them to use the facilities of competing companies and not use those of Mackay Radio?

A. I didn't know that they had done that.

Q. Never heard of it before?

A. Never heard that they had done that.

Q. And if you were re-employed by the company and requested to do that, would you do so?

A. I don't know.

Q. Can't answer?

A. Can't answer.

Q. Can you answer this: If you were re-employed by Mackay Radio and the instructions of your superiors in the Mackay Radio office were in conflict with the instructions you would receive from your union leaders, which would you follow?

732 Mr. EDISES. I object to that, Mr. Examiner, on the ground it sets up a hypothetical possibility and asks him what his opinion or his actions would be at a future time on the basis of that speculation.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. I want to remark it is not very speculative, having already occurred, as far as this witness is concerned.

Mr. EDISES. Is that evidence?

Mr. MERRICK. It is to assist the Examiner in changing his ruling, if he so desires.

Examination by Trial Examiner EICKHOFF:

Q. Let me ask you this: You said there was a boycott on one side—that is, in the marine group—and a strike by the point to point group?

A. Yes, sir.

Q. Was the strike binding on the marine group?

A. No.

Q. And it is your testimony, do I understand you, that the boycott is not binding on the point to point group?

A. They voted to strike.

Q. Although either side may ask the other side for help or cooperations?

A. Yes.

By Mr. MERRICK:

Q. In this conversation that you testified to with Mr. Russ
733 on the morning of September 13, 1935, you said you made some complaints about scabs. What were those complaints?

Mr. EDISES. May I have that question read, please?

(The question referred to was read aloud by the reporter as above recorded.)

A. The complaint, as stated by Mr. Rathborne, was a general complaint to the effect that the Mackay Radio, as far as the marine divi-

sion was concerned, were completely ignoring the ARTA. As a matter of fact, going to great lengths to obtain marine operators elsewhere rather than to get them from the union hall, unless the steamship company instructed Mackay Radio to get the marine operators at the union hall.

By Mr. MERRICK:

Q. What has that to do with scabs?

A. Perhaps I shouldn't have used the word "scab" at that time.

Q. You said perhaps you shouldn't?

A. Yes.

Q. Do you wish now to strike that reference to scabs in your previous testimony?

A. Yes; inasmuch as there was no strike on the Pacific Coast that word should be stricken out.

Q. In other words, there isn't a scab unless there is a strike, and there was no strike, is that it?

A. Yes; that is it.

734 Q. Mr. Bash, have you ever requested permission from the traffic manager of the office to leave the office, and when he told you that it was very difficult to leave at that time because he had no extra operator and it was a busy hour, told him that you didn't care, that you were going to leave anyway?

You deny you ever said that?

A. I do.

Q. On the meeting of the afternoon of September 13 you stated that before Mr. Rone and Mr. Palmer arrived you had quite a little discussion about the marine agreement. Are you quite sure that was before they arrived?

A. No; I am not.

Q. May have been after?

A. May have been. The discussion itself was quite lengthy. There may have been a little before and quite a bit after.

Q. It seemed you spoke a little bitterly about Mr. Stone in this conference. Do you feel bitterly toward him?

Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. Am I to understand the Examiner will exclude questions as to the feeling this witness has toward the officials of the company?

Trial Examiner EICKHOFF. Unless some direct bearing might appear.

735 Mr. MERRICK. I couldn't hear.

Trial Examiner EICKHOFF. Unless some direct bearing might appear.

Mr. MERRICK. That is the only direct bearing it has. You will exclude questions as to the attitude of this witness and his feelings towards the officers of the company?

Trial Examiner EICKHOFF. Are you expecting an answer from me?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. I have already answered your question.

Mr. MERRICK. You qualified it in some way. I couldn't understand the qualification.

Trial Examiner EICKHOFF. Unless some direct bearing appears.

Mr. MERRICK. I say that is the only direct bearing, and I won't proceed to ask a string of questions and have the objection sustained to each one if you state you will exclude the line; that is all.

Trial Examiner EICKHOFF. I made my statement.

By Mr. MERRICK:

Q. Do you feel that Mr. Stone has been fair to the men?

A. No.

Q. In what respects do you consider he has been unfair?

736 A. Well, in one respect he asked us to grant him certain time to get back to New York and start negotiations. We gave him more time than he asked for. When he got back to New York, instead of preparing to negotiate, he prepared to break the strike.

Q. What knowledge have you of that? What did he do that you know of to prepare to break the strike?

A. He shipped a planeload of scabs out here.

Q. Was that before or after the strike?

A. During the strike.

Q. You said now that when he returned to New York, instead of negotiating he prepared to break the strike. What evidence have you to support that statement?

A. The broken strike.

Q. You assume, from the fact that the strike did fail, that he must have prepared in advance to meet it?

A. Yes. He said we had him with his pants down out here.

Q. That is the only basis there is for that statement?

A. Isn't that enough?

Q. Will you answer "Yes" or "No"?

A. That is the only basis.

Q. That is the only respect in which you know of that Mr. Stone has been unfair to the men?

A. That is the only one I can say offhand; yes.

Q. You would consider anybody unfair who broke the strike, wouldn't you?

737 A. Oh, no; no.

Q. What action was it that was unfair, aside from breaking the strike, preparing in advance?

A. To create the impression here that he was sympathetic towards us and then go and do what he did.

Q. Do you think he is a double crosser?

A. That, yes.

Mr. EDISES. I object to the question and ask that the answer go out.

Trial Examiner EICKHOFF. He may answer.

By Mr. MERRICK:

Q. Do you think he is a liar?

Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. You say you were on duty on the picket line on various times during the strike. How many other men were also on picket duty during the strike?

A. Well, all of them, as far as I know.

Q. As far as you know they took approximately equal turns in serving on the picket line?

A. Yes.

Q. Any particular incidents that you know of in connection with the picketing that involved individuals, some individuals, more than others?

Mr. EDISES. I object to that question. It is too general, Mr.
738 Examiner. If he has some specific instance he wants to question about, he can do it.

Trial Examiner EICKHOFF. I will allow the question.

The WITNESS. What is the question?

(The question referred to was read aloud by the reporter as above recorded.)

The WITNESS. Just what do you mean?

By Mr. MERRICK:

Q. In connection with serving as pickets.

A. No; I don't know of any.

Q. On direct examination you said you left the ARTA hall on Monday, October 7, as I understand it, about 11 or 11:30.

A. Yes, sir; it was around that time because the ferry boat leaves at 11:40—no, it was around 11:00. The ferry boat leaves at 11:15.

Q. When did you arrive at the union hall that time?

A. Wait a minute—Monday, October 7?

Q. Yes.

A. You asked me when I left?

Q. No, when you arrived. Your counsel asked when you left. I am trying to find out how long you had been there.

A. I arrived at 10 o'clock in the morning.

Q. You arrived at 10 o'clock in the morning. Did you stay there all day continuously?

A. Yes.

Q. Then you were there up until 11 o'clock that night?

A. Yes.

739 Q. Didn't go out for a meal?

A. Might have gone out and got a cup of coffee, or something like that.

Q. But you were there, except for a very short period, during the entire day from 10 o'clock in the morning to 11 o'clock at night?

A. I wasn't away from there at any one time for any great length of time.

Q. And you testified on direct examination to everything that you recollect happened at the hall in connection with the strike, of any importance?

Mr. EDISES. I object to that question. It assumes something not in evidence. I didn't ask a question of that kind.

Mr. MERRICK. I think you did.

Mr. EDISES. I didn't ask him to state everything that happened on Monday, October 7. I asked him two or three specific questions on what happened on that day.

Trial Examiner EICKHOFF. Read the question, Mr. Reporter, please.

Mr. MERRICK. I might reframe it.

By Mr. MERRICK:

Q. Can you think of anything that seemed at all important to you that happened at the ARTA hall during that day, that you haven't mentioned on your direct examination?

740 A. If I knew what you were driving at, probably I could give a much better answer.

Q. You can say "No," and then I will ask you a few specific questions, if you will?

A. I will say nothing of importance.

Q. Was any formal meeting held that day?

A. Monday, October 7?

Q. Yes.

A. Monday, October 7, at 10 o'clock a. m.; yes.

Q. Was it a formal meeting of which minutes were kept, or was that just a regular daily meeting?

A. A daily meeting held during the strike, the duration of the strike.

Q. Were minutes taken of that meeting?

A. I don't know.

Q. You don't know?

A. No.

Q. Did you preside as chairman at the meeting that day?

A. No.

Q. Who did, do you know?

A. Mr. Loudermilk; and Mr. Rathborn was there also.

Q. Did you designate Mr. Loudermilk as your substitute as chairman?

A. No; I didn't. I just simply wasn't there when the time for the meeting to be called to order came, and at any time

741 *time* they have a right to nominate or designate the party to act as chairman.

Q. And they can transact business at a meeting without your being present or being aware of the meeting?

A. Yes.

Q. Did you attent any meeting yourself that day?
A. Yes.
Q. What time was that meeting?
A. 10 o'clock.
Trial Examiner EICKHOFF. You attended the 10 o'clock meeting but you got there late, was that it?
The WITNESS. That is it; yes.

By Mr. MERRICK:

Q. Any other meeting that day at your hall?
A. None that I know of.
Q. And that goes for right up to the time you left at 11 o'clock?
A. Yes.
Q. Did you hear any discussion at that time among the members as to terminating the strike?
A. Yes; I heard some.
Q. What was that?
A. It was Spanover and McLaughlin.
Q. They were the only two?
A. The only two I heard. They were doing the talking.
742 Q. To whom were they talking?
A. They had circles around them, and circulating.
Q. And they seemed to be expressing an opinion contrary to that of the rest of the people there?
A. Yes.
Q. You said that after you heard about the meeting at the Bellevue Hotel you called Sam York over to your house. Is that it?
A. Yes.
Q. Did you request Mr. York to attend the meeting at the Bellevue Hotel?
A. No; I just simply told him the circumstances.
Q. He didn't know anything about the meeting until you told him about it?
A. No.
Q. Did he say whether or not he was going to the meeting when he left you?
A. Yes.
Q. Did he ask you why you didn't come along?
A. Yes.
Q. What did you tell him?
A. I was—it was very plain I couldn't go.
Q. You couldn't go—you mean you weren't able?
A. I wasn't physically able to go.
Q. What was the difficulty, simply tired?
743 A. I fainted.
Q. Did Mr. York ever report to you what occurred at the meeting?
A. Yes.
Q. Did he tell you that he went back to work at the close of the meeting and was given his regular job?

A. He didn't say that; no.
Q. Did he say something very different from that?
A. Considerably different.
Q. Did he say that he was not re-employed?
A. Said he was re-employed temporarily.
Q. When did he tell you that?
A. That same—when he got back from that meeting, about 6 o'clock in the morning, I guess.
Q. He came back to your house?
A. Yes.
Q. And told you that?
A. Yes.
Q. Did he advise you to make application the same as he had one?
A. No.
Q. You didn't do it that day, did you?
A. No.

744 Q. Did you have any reason for not doing it, aside from the fact that you weren't physically able to go over and make application?

A. Yes.
Q. What other reason?
A. I have a list that he copied down, when Mr. Jorgensen read off the names that wouldn't be allowed to return to work.
Q. Wasn't Mr. York's name on the list?
A. Yes.
Q. Didn't he say he had returned to work?
A. Temporarily.
Q. And you didn't want to go back to work temporarily?
A. I wasn't able to go back to work under any circumstances.
Q. I asked you the only reason why you didn't apply was your physical condition, and you said "No."
A. That is correct.
Q. Then you say the only other reason you had, if you had gone back you would have been employed only temporarily?
A. I don't know that I would have been employed at all. I was one of the men that couldn't go back. What is more obvious than that?
Q. York told you he had gone back.
A. Temporarily, for a few days, until they found out——
Q. (Interrupting.) And you didn't want to go back on that basis, is that it?
A. I didn't say it.

745 Q. What was your attitude toward that at that time?

A. I would have gone back and took the job if I had an opportunity. I had no opportunity.
Q. Because of your physical condition?
A. And the list.

Q. Had you any reason to believe that you were any different on that list from Mr. York?

A. Yes.

Q. Who told you, any official of the company or representative?

A. Just my opinion.

Q. Just your opinion?

A. Yes.

Q. When was it you say you first did apply for reemployment?

A. The following day.

Trial Examiner EICKHOFF. Just a minute!

Mr. MERRICK. That is Wednesday.

Trial Examiner EICKHOFF. Would it be inconvenient for you to adjourn until Monday morning?

The WITNESS. Yes; it would.

Trial Examiner EICKHOFF. Then go ahead.

By Mr. MERRICK:

Q. Was your physical condition much better on Wednesday than it was on Tuesday?

A. It was some.

746 Q. Had you been informed that the conditions connected with your application for reemployment had changed any between Tuesday and Wednesday?

A. Yes; I had.

Q. You had been informed that they had changed?

A. Yes.

Q. Who informed you that conditions had changed?

A. Mr. Palmer and Mr. Loudermilk called and——

Q. (Interrupting.) I mean, any representative of the company that had informed you that the conditions, as far as the company was concerned, had changed?

A. No.

Q. So that when you applied on Wednesday you understood that you were applying for merely temporary employment, subject to the final action on your application by Mr. Stone?

A. I don't understand that—didn't understand that; no.

Q. What was it you understood at the time you signed this application?

A. [Pause.] My understanding was that I was to fill out an application and make application also for reinstatement, and then it was to be acted on by the officials.

Q. And that was the same thing that was being done the day before, on Tuesday, was it not?

Mr. EDISES. I object to that question, Mr. Examiner. How does he know? He wasn't there on Tuesday.

747 Trial Examiner EICKHOFF. Objection sustained.

By Mr. MERRICK:

Q. As far as you know, there was no difference in the nature of these applications that were filed on Tuesday and those that were filed on Wednesday?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Overruled.

The WITNESS. What is the question?

(The question the witness referred to was read aloud by the reporter as above recorded.)

A. Other than the list; no.

By Mr. MERRICK:

Q. I don't understand that. What has the list to do with the nature of the applications?

A. I have a list here of men who were not to be allowed to return to work.

Q. But the applications that were filed, as far as you know, were the same on both days, and the conditions in connection with them were the same on both days?

A. I don't know.

Q. You don't know of anything different?

A. I don't know of anything; no.

Q. Was there any reason, other than the improvement in your physical condition, for your filing your application on Wednesday rather than on Tuesday?

A. No.

Q. No?

748 A. Not that I know of. I suppose if I had gone on Tuesday I could have gone through the same procedure on Tuesday as I did on Wednesday.

Q. As I understand it, one of the purposes of your union is to band you together for concerted action and for the benefit of all the members. Is that right?

A. Yes.

Q. And you call each other brothers?

A. Yes.

Q. Are you willing to accept reemployment with the company even though the other four brothers are not taken back?

A. [Pause.] Yes.

Q. You are?

A. Yes.

Q. Did you urge any of the men on Tuesday not to go back to work because eleven men were not being taken back?

A. No.

Q. You didn't urge any one not to go back to work at all on Tuesday?

A. No.

Q. Did you discuss the question of going back to work with any of the other members of your union?

A. On Tuesday?

Q. On Tuesday.

A. Yes.

749 Q. Including the early morning of Tuesday?

A. Yes.

Q. Did you urge them to go back to work?

A. Yes.

Q. Even though eleven men were not being taken back to work, as you say?

A. I didn't urge them to go back to work; I urged them to go to the meeting.

Q. I asked you about going back to work. Did you have any discussion——

A. (Interrupting.) I urged one man to go back to work and get his job if he could.

Q. Who was that?

A. Clifford.

Q. Did he go?

A. Yes; he finally went.

Q. Did he get his job back?

A. Yes.

Q. Do you have any bitter feeling towards the scabs that are now in the H. B. office?

A. A scab is a scab.

Q. And you think that the mere term "scab" shows that a union member must feel bitterly toward him?

Mr. EDISES. I object to that question as assuming something not in evidence. He hasn't testified to that.

750 Mr. MERRICK. He can say "No."

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. What did you mean when you answered my question by saying "A scab is a scab"?

A. I meant that in my opinion a scab is a disgrace to humanity.

Q. He is the vilest of the vile. Is that right?

A. I can't think of anything more vile.

Q. You don't knowingly and voluntarily associate with vile things of life, do you?

A. No, I don't.

Mr. EDISES. Object to the question.

Trial Examiner EICKHOFF. It has been answered.

I will ask you to, before you answer, give counsel an opportunity to object.

By Mr. MERRICK:

Q. Do you agree with the previous definition of a scab as one who goes back to work before the end of a strike?

You don't have to look at counsel to get the answer; I am asking you.

The WITNESS. I was wondering if he was going to object.

Q. If he doesn't, you go ahead.

A. No, I wouldn't consider a man who went back to work under certain conditions a scab.

751 Q. What conditions have you in mind when you say "certain conditions"?

A. Well, a man that was stampeded into going back, I wouldn't call a scab.

Q. And by stampeded, you mean if the majority of the men decided to go back and he goes back with them, that he is stampeded and so he is not a scab?

A. No, I wouldn't say that. I would say when men who are looking to leadership that is not available at the time and stampeded into doing something, I wouldn't call them scabs. I would call the men who assumed this leadership scabs.

Q. You are referring to the situation that arose during this last strike, is that it?

A. Yes.

Q. What individuals, then, do you consider to be scabs that you say rose and assumed the leadership?

Mr. EDISES. I object to that question on the ground that it is indefinite. If counsel will specify during what period he is referring to, who assumed the leadership, and during what period, I believe——

Trial Examiner EICKHOFF (interrupting). I think the question is perfectly clear.

Mr. EDISES. I think he has a different period in mind.

Trial Examiner EICKHOFF. If it is too indefinite for
752 the witness, if he doesn't understand it, why he can say so and we can have it reframed.

Mr. MERRICK. Will you read the question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.

By Mr. MERRICK:

Q. During the strike.

A. Well, I would have to know just how much pressure had been put on them.

Q. You didn't have any definite persons in mind when you made that statement?

A. Not necessarily.

Q. Did you or didn't you?

A. No.

Q. When you said that certain conditions might justify a man going back to work so you wouldn't call them a scab, you said those conditions were where there wasn't any leadership. Are you inferring that the strike of the San Francisco Local here and in New York lacked proper leadership?

A. I was referring to this: That at an hour of that time, at that hour of the night, if I had been in the position that some of these men were in, not knowing where I was, or where any of the strike captains were, or what they were doing, and had received a phone call that they were having a meeting, I would have been inclined to attend that meeting.

Q. At what hour are you speaking of?

753 A. After midnight, 2 a. m. in the morning.

Q. You had knowledge of the meeting before it was called, didn't you?

A. Yes; indirectly I got it.

Q. You didn't go over and try to attend the meeting or dissuade the men from attending?

A. I couldn't.

Q. You couldn't? Did you ask anybody to try to dissuade the men from attending that meeting?

A. It wouldn't have been proper for me to try to dissuade anyone from trying to attend the meeting.

Q. You mean to say they were free to attend the meeting if they desired, and there was nothing that you considered in violation or contrary to the union procedure?

A. I didn't consider it a proper meeting; no.

Q. Well——

A. (Interrupting.) A man is free to do what he wants to.

Q. You didn't consider it to be in contravention with any of the regulations of the union?

A. Oh, yes; it was. There was no meeting scheduled at that time.

Q. Weren't you chairman of your meeting?

A. Yes.

Q. Why didn't you, as the leader at that time, try to see that something was done to prevent the holding of an unauthorized meeting?

754 A. What could I do?

Q. You weren't able to do anything?

A. No.

Q. Couldn't send anybody to act for you?

A. As a matter of fact, Mr. Rathborne did go to the meeting and he was invited to leave peacefully or be thrown out.

Q. But he didn't try to dissuade the men from attending, did he?

A. I don't know.

Q. Not that you know of. He was simply invited not to attend the meeting himself. Is that right?

A. Yes.

Q. You heard the testimony of one of the previous witnesses about the strike might be terminated prior to the time that it was called off by the leader of the union that was responsible for the calling of the strike, did you?

A. I heard that testimony.

Q. Is it your opinion, as an active member of this organization, that a strike is just as much terminated when a majority or a large majority go back to work, as it is after the strike has been formally called off by the union that called it?

A. I have never formed an opinion on the matter.

Q. You haven't any opinion as to whether it takes 51 or 90 percent to end a strike?

755 A. No.

Q. In your opinion, when did the strike against Mackay Radio end?

A. Ended Tuesday morning when the men went back to work.

Q. What time?

A. About 9 o'clock.

Q. And why do you pick that out?

A. Well, that gave at least other men a chance to get to work.

Q. And you picked that because you think everybody had a chance to get to work?

A. I didn't say everybody; I said other men.

Q. How many others?

A. As many as we could get hold of.

Q. You don't have any percentage of men in mind that is necessary to return to work before the strike is ended?

A. No.

Q. If, at 9 o'clock on Tuesday morning, less than 50 per cent of the men had returned to work, would you still say, in your opinion, the strike was ended at that time?

A. No; I wouldn't.

Q. You would not?

Trial Examiner EICKHOFF. I don't think we are getting anywhere now with this cross examination, Mr. Merrick.

Mr. MERRICK. It is very slow progress, I must admit.

756 Trial Examiner EICKHOFF. The witness stated he has no views about percentages.

Mr. MERRICK. He just said he thinks the strike ended at 9 o'clock.

Trial Examiner EICKHOFF. Then he said he had no idea about percentages. Why not get to something else?

By Mr. MERRICK:

Q. Are you a communist, Mr. Bash?

Mr. EDISES. I object to the question.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. May we have the same stipulation then as before, that I make the offer to ask him these questions as to the subject of communism, and that you rule them out as improper cross examination?

Trial Examiner EICKHOFF. Yes; similar questions to those which you asked previously and to which objections have been sustained.

Mr. MERRICK. That includes questions as to affiliations of officers of the union, with which this witness is perhaps a little more acquainted than some of the previous witnesses?

Trial Examiner EICKHOFF. You mean political affiliations, or friends, and so on?

Mr. MERRICK. Affiliations with communistic organizations.

Trial Examiner EICKHOFF. Yes.

By Mr. MERRICK:

757 Q. One more question. In your opinion, Mr. Bash, has Mr. Stone a narrow anti-labor attitude?

Mr. EDISES. Object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. Objection sustained.

Mr. MERRICK. No further questions.

Redirect examination by Mr. EDISES:

Q. Mr. Bash, are there any committees, other than the Grievance Committee, which has negotiated with the company in regard to working conditions?

A. Yes, the administrative committee.

Q. Any other, other than the Grievance Committee and the Administrative Committee?

A. None.

Q. Do you recall a meeting—I will reframe it. Were you present at all of the meetings of the union from the time that it was organized, first organized?

A. No.

Q. Referring to the meeting that was held here with Mr. Stone on September 13th in the afternoon, did Mr. Stone promise that he would——

Mr. MERRICK. (Interrupting.) I object to it as leading.

758 By Mr. EDISES:

Q. Did Mr. Stone make any statement or promises as to what he would do as soon as he got back to New York?

A. He said he would begin negotiations immediately.

Q. Do you know whether he did or not?

A. I don't know.

Q. Mr. York's name was on this list, as well as yours. You stated that you thought your case was different from Mr. York's. What did you have in mind when you said that?

Mr. MERRICK. I object to that.

Trial Examiner EICKHOFF. I will allow it.

A. Mr. York was a supervisor. I was only an operator.

By Mr. EDISES:

Q. You mentioned certain assumed leaders, or persons who assumed leadership. Who did you have in mind when you stated that?

A. Bob Hatch, McLaughlin, and Spanover.

Q. Do you know of any reason why your work would be inefficient or adversely affected if you were given an opportunity to return to work?

Mr. MERRICK. I object; it is hypothetical.

Trial Examiner EICKHOFF. Sustained.

Mr. EDISES. That is all.

Recross examination by Mr. MERRICK:

Q. Just one question. Isn't it true that when I asked you
759 what people you had in mind on cross examination, those who had assumed leadership, you said you had no one in mind, and when your own counsel put the same question to you, you answer it. Is that a correct statement of what just happened?

Mr. EDISES. I don't believe I asked him that same question.

Mr. MERRICK. Exactly the same question, and in exactly the same words.

Mr. EDISES. I don't believe it was.

Trial Examiner EICKHOFF. I don't know what the record shows now.

Mr. MERRICK. I asked him if this isn't a fact.

Trial Examiner EICKHOFF. Answer "Yes" or "No" and then give any explanation you may care to make.

By Mr. MERRICK:

Q. Isn't that a fact?

A. I have no positive way of knowing myself that these men did assume that leadership.

Q. You understood that my question was asking for the same kind of information that your counsel's question asked for, didn't you?

Mr. EDISES. I object to his answer on the ground it is not the same question, and the record will show it.

Mr. MERRICK. I am asking for his recollection.

Trial Examiner EICKHOFF. This is cross-examination now.

760 As I recall the testimony, it was concerning scabs, and the witness said, with respect to scabs, that certain people assumed leadership under certain circumstances, and might be scabs; then I think he later changed that.

Mr. MERRICK. I asked him then what those persons——

Trial Examiner EICKHOFF. (Interrupting.) You asked him if he referred to any one in particular.

Mr. MERRICK. I asked him whether he had any person in mind that, in his opinion, did assume leadership during that period, and he hesitated some time and looked at counsel, and finally said, no, he didn't have anybody in mind.

Isn't that correct?

The WITNESS. I believe that is correct.

Trial Examiner EICKHOFF. Were you avoiding the question then?

The WITNESS. No, I had something else in mind.

Trial Examiner EICKHOFF. Tell what you had in mind. That may clear it up.

The WITNESS. As I understood the question, he was getting at who I would term scabs, and I later qualified it by saying certain men under what strain they might be under, what mental strain they might be under, might be stampeded to return to work.

Then there was another question followed, and I qualified that one also, the one he said in regard to these leaders, and then
761 I replied I would also have to know under what pressure they might have been put, before I would call them a scab.

Trial Examiner EICKHOFF. In other words, you didn't want to name those men as scabs?

The WITNESS. No; because I don't know what their mental attitude was. I know that I was very low that night myself.

Trial Examiner EICKHOFF. But you feel there were leaders at this meeting?

The WITNESS. Yes; I feel there must have been leaders there.

By Mr. MERRICK:

Q. That is your only explanation, only reason why you cannot answer my question, rather, why you didn't answer my question when you did answer your counsel's question?

A. Yes; I have no one in mind at that meeting that would come under my definition of a scab.

Q. You didn't consider anyone who attended that meeting necessarily a scab?

A. I would have to know more about the circumstances under which they attended.

Mr. MERRICK. That is all.

Trial Examiner EICKHOFF. Is that all?

Mr. MERRICK. That is all.

Trial Examiner EICKHOFF. May this witness be excused
762 for the rest of the hearing?

Mr. MERRICK. I don't know of any reason for recalling him, other than for the kind of testimony that you have excluded on cross.

Trial Examiner EICKHOFF. The Board will know where to get in touch with you?

The WITNESS. I will leave my phone number; yes.

Trial Examiner EICKHOFF. Then you may be excused.

(Witness excused.)

Trial Examiner EICKHOFF. The hearing will adjourn until Monday, December 9, 1935, at 10 o'clock a. m.

(Thereupon, at 12:55 o'clock p. m., the hearing was adjourned until Monday, December 9, 1935, at 10:00 o'clock a. m.)

763 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Monday, December 9, 1935.

Met pursuant to adjournment at 10:15 a. m.

Colloquy

Trial Examiner EICKHOFF. Call your next witness.

Mr. EDISES. Mr. Phelps.

Mr. MERRICK. Before we start with the next witness, I would like to have this statement on the record:

Mr. Wagenet, the Regional Director of the National Labor Relations Board for this district, and who, I believe, has been present in this room advising and assisting the attorney for the Board throughout this hearing, has been recently reported in the public press of this city as having said that the questions addressed to the witnesses thus far called on behalf of the Board, by the attorney for the Mackay Radio, on the general subject of communism and the connection of the ARTA, the complainant in this proceeding, with the communistic movement represented a resort to the old trick of trying to draw a red herring across the trail.

764

Now, the inferences intended to be drawn from such a statement are obvious.

Though I hesitate to believe that the Regional Director has expressed himself in this way, I would like to have him either affirm, admit, or deny that he has been correctly quoted in the press.

Mr. WAGENET. Well——

Trial Examiner EICKHOFF (interrupting). Just a minute! There is no occasion for his doing so unless he chooses to, and in that case we will put him on the stand. You may call him as a witness at this time if you wish.

Mr. MERRICK. I am not calling him as a witness. This is a peculiar kind of procedure. It is contemplated that the function of the Board is somewhat an impartial one. The Board, in this case, has taken its position on one side, and expresses itself publicly on the kind of case that this respondent has. I think it should appear as a matter of record.

765

Trial Examiner EICKHOFF. There is nothing in the record that this appeared in the press.

Mr. MERRICK. It would appear if he would either admit or deny it.

Mr. EDISES. I suggest Mr. Wagenet be given an opportunity to express himself, first of all on the point of whether or not he actually made such a statement to the press.

Mr. MERRICK. That is all I suggest.

Trial Examiner EICKHOFF. In that case you will put Mr. Wagenet on the stand.

Off the record.

(Discussion off the record.)

Trial Examiner EICKHOFF. On the record.

Mr. EDISES. I want to ask Mr. Merrick if he will produce whatever newspaper article he is referring to so that we may have an opportunity to know exactly what he has in mind.

Mr. MERRICK. I will if the attorney for the Board thinks it is necessary to in order to answer the question.

If Mr. Wagenet made the statement he knows it, and if he didn't make it, he knows it.

Trial Examiner EICKHOFF. Are you going to attempt to establish that the Board is prejudiced or impartial, or has done something improper?

766

Mr. MERRICK. It is some evidence, it seems, of the lack of impartiality on the part of the representatives of the Board.

Trial Examiner EICKHOFF. I won't accept a mere newspaper article as evidence of anything except what appears in that article.

Mr. MERRICK. If he admits he was correctly quoted in the newspaper, it has some evidentiary value.

Trial Examiner EICKHOFF. The point is this: If you are going to charge anyone here with impartiality, and I do not know that the Board need necessarily be impartial, you should go about proving it, not merely making a statement in the record.

Mr. MERRICK. It is rather difficult for counsel to know how to proceed in this case since we have no rules at all as our guide. You say that this is not the proper way; then we will find some other way.

Trial Examiner EICKHOFF. I don't know at the moment whether it is material; whether Mr. Wagenet, or the Board, need be strictly impartial.

Mr. MERRICK. I am not positively sure either.

Trial Examiner EICKHOFF. They are obviously here representing the complainants.

Mr. MERRICK. The attorney for the Board is.

Trial Examiner EICKHOFF. The attorney for the Board is only acting in a representative capacity.

Mr. MERRICK. I do not think we need to argue about the
767 meaning of the Act here. If the Act does contemplate that the Board shall be the prosecutor, and the trier of the facts, why it may be that something else will be said as to the constitutionality of the Act, other than what I have already said on the subject.

I just think it may be of some value to show that the representative of the Board has been making statements to the press which were intended to cast an unfavorable light upon the attitude taken by the respondent.

Trial Examiner EICKHOFF. It seems to me that you should first show me that such evidence would be material, and that you should then produce the evidence.

Mr. MERRICK. Well, an admission, I always understood, was pretty good evidence.

Trial Examiner EICKHOFF. You didn't produce any evidence. You merely made a statement in the record.

Mr. MERRICK. That is correct. I will take Mr. Wagenet's word one way or the other on it, without being under oath.

Trial Examiner EICKHOFF. I don't know that it is material.

Mr. MERRICK. The inference has gone out to the public, from a representative of this Board, as having said that the Mackay Radio are scared of the merits of their case and are attempting to drag in every kind of subterfuge.

768 If counsel for one side or the other thinks of something in connection with the proceeding, that indicates it is not being carried on in the manner in which a judicial procedure should be carried on, or a proceeding under this Act, then it seems to me it is

the function of the person who is conducting the examination of the trial to permit that evidence to go on the record.

He, Mr. Wagenet, has had remarks before, I believe, directed put on the record. I don't see any reason why he cannot state, in answer to the simple question, whether it is true that he has been correctly quoted.

Trial Examiner EICKHOFF. I have no objection if he chooses to do so, but I hardly think it is material.

Mr. EDISES. Mr. Merrick, we want to know particularly, exactly, what you are charging Mr. Wagenet with having said. In other words, let us have the statement that is attributed to him. You haven't said what newspaper it was in, or anything about it at all.

Mr. MERRICK. Perhaps he can tell us about all the other newspapers. I saw just one. I believe it was the Chronicle in the morning of last Saturday, I believe; possibly might have been Friday.

Mr. EDISES. Your identification is certainly sufficiently vague and indefinite.

Mr. MERRICK. Mr. Edises, if I had made such a statement I
769 would know whether I had or not, and if I had not made such a statement I would also know, and I wouldn't have to weasel around and try to have it identified as to exactly the time and place.

If that is the answer of the Regional Director of the Board, I am willing to let it stand there. He declines to either affirm—either admit or deny that he has been correctly quoted.

Trial Examiner EICKHOFF. I don't think it is even incumbent on the Board to make any statement at all. If the Board wants to make a statement, in view of what has gone in, I will permit it to do so.

Mr. MERRICK. I didn't expect that this question would delay the hearing any such length of time.

I suggest that if Mr. Wagenet needs more than another ten minutes to decide whether or not he has been correctly quoted, that we continue with the next witness and I will renew my question at a later time.

[Counsel Edises in consultation with Mr. Wagenet.]

Trial Examiner EICKHOFF. That will depend on the pleasure of the counsel for the Board. This comes as a surprise, obviously.

Mr. WAGENET. I think it is only a fair proposition to have counsel for the respondent produce the particular item he is referring to. I
770 can only say at this time that I have not seen the article; I know nothing about it. I have not talked to a Chronicle reporter, so far as I can recollect, throughout the entire course of this trial, nor none of them have called me up.

Trial Examiner EICKHOFF. Call you next witness.

Mr. EDISES. Mr. Phelps.

P. D. PHELPS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. MERRICK. I would like to ask a question in regard to that oath. I have never heard an oath administered in the form the

Examiner used in this proceeding. I would like to ask him what authority there is for that oath, and whether or not he believes that false testimony given, after the swearing of the witness in that way, affords prosecution for perjury.

Trial Examiner EICKHOFF. Will you read that statement, Mr. Reporter?

(The statement referred to was read aloud by the Reporter as above recorded.)

Trial Examiner EICKHOFF. I will state that the oath is a proper oath and any perjury on the part of the witness, or any false statement on the part of the witness would support a charge for perjury.

Mr. MERRICK. Would you mind telling me what authority there is for that oath?

Trial Examiner EICKHOFF. I will make no further state-
771 ment in regard to that.

Mr. MERRICK. I request that the witness be resworn and that the words "so help me God," be added at the end of the oath.

Trial Examiner EICKHOFF. I have no objection to that, although I think it unnecessary, and I will do just to accommodate you.

Mr. MERRICK. Very well. I am asking that because I understand that is the form of oath prescribed by the California statutes.

Mr. EDISES. Under the California statutes it is not necessary to swear a witness. You can simply affirm you are going to tell the truth.

Trial Examiner EICKHOFF. Will you kindly raise your right hand and be sworn again?

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God, in this matter?

The WITNESS. I do.

Direct examination by Mr. EDISES:

Q. What is your name?
A. P. D. Phelps.
Q. Your address?
A. 4315 25th Street.
Q. Are you married?
772 A. Yes.
Q. Any children?
A. Two.
Q. How old?
A. Eighteen and 16.
Q. When did you first go to work for Mackay Radio?
A. June 1928.
Q. And have you been working continuously for Mackay ever since?
A. Yes.
Q. For whom did you work before you worked for Mackay?
A. Western Union.
Q. In what capacity?
A. Operator.

Q. How long did you work for Western Union?

A. A matter of a year or a little more.

Q. What is your job at Mackay Radio?

A. Well, when I first went to work there I was an operator for a couple of years, and then I was promoted to the managership of the Stock Exchange Branch.

Q. Is that the F. K.?

A. That is right.

Q. Have you been the manager of the Stock Exchange Branch ever since the time that you were first promoted to that?

A. Yes.

773 Q. What salary did you receive when you first went to work for Mackay?

A. $160.

Q. Did you get any raises?

A. When I was promoted I was raised to $175.

Q. Any change in your salary after that?

A. Well, there was what was termed selective reductions during the depression. Some men were selected for cuts in varying amounts. The majority of the operators were cut $5, on one occasion, and I was cut $8; and on another cut, when the operators were cut $5, I was cut $7. That brought my salary as manager down to $160.

Q. Is that what you were receiving at the time of the strike?

A. No. Subsequent to these reductions, a 6 percent increase was granted, which amounted to $9.40, or $9.60—I don't recall which—in my case.

Q. What did your work as manager of the FX Branch entail?

A. It entailed commercial activities and work of a traffic nature, such as handling of the Morse telegraph, radio, teletype, telephone, and some solicitation work.

Q. Solicitation of customers?

A. Yes; business.

Q. Did you have any other direct relation to customers, Mr. Phelps?

774 A. In this particular office I was in contact with them daily as a matter of personal contact.

Q. Do you belong to the ARTA?

A. Yes.

Q. When did you join?

A. About March or April of 1934.

Q. Were you the only managerial employee who belonged to the ARTA?

Mr. MERRICK. I object to that. It is impossible for the witness to know that.

By Mr. EDISES:

Q. If he knows.

A. I can't say.

Trial Examiner EICKHOFF. Just a minute! Sustained.

By Mr. EDISES:

Q. Do you know of any other branch managers that belonged to Local No. 3?

A. No.

Mr. MERRICK. I submit, before he answers that, he should ask if there are any other branch managers.

Trial Examiner EICKHOFF. He included that in the question, I think. Overruled.

By Mr. EDISES:

Q. When did you join ARTA?

A. March or April of 1934, to the best of my recollection.

Q. Did you have anything to do with the organization of the Local?

775 A. Not particularly. A couple of men work for me. I asked them if they belonged, and when they expressed their inclination to join, why I told them how and where to do so.

Q. You say you were a managerial employee. Did you feel that that was consistent with your membership in the Labor Union?

A. I did.

Q. Can you explain that?

A. Well, as a telegrapher for 25 years, and having worked in offices where they were unionized and where they were not unionized, in the light of my experience the unionized offices were more efficient and the men were better pleased and fared better in every respect.

Q. Who was your immediate superior in the F. X. office?

A. Mr. F. L. Dewey.

Q. What is his position?

A. I believe he is city manager, manager of the metropolitan district, or something of the sort.

By Trial Examiner EICKHOFF:

Q. Where is his office?

A. 22 Battery.

By Mr. EDISES:

Q. Were you present at the ARTA meeting on October 4 when the strike was announced?

A. Yes, sir.

Q. And did you go on strike at 12 midnight of October 4?

A. No.

Q. Did you go on strike at all?

776 A. I went on strike Saturday, the following day, about 12:30.

Q. How did it happen that you didn't go out when the others did?

A. Well, in the first place, it was a matter of considerable moment to me. The decision required discussion at home, and considerable though, owing to troubles, personal troubles of our own.

In the second place, the office doesn't open until early in the morning. It is not a continuous office.

In the third place, as manager of the office, I felt that I owed an explanation to customers, who were also friends, known me for ten years or more.

Furthermore, Supervisors, some of them, were still working, so I called the girl who works with me on the phone—I went to work that Saturday morning, the 5th—called the girl on the phone and told her that the strike had been called and that I hadn't made up my mind yet, but in any case she should come in on her regular hours and explain to the customers that the service was disrupted, which was an established fact by that time. No circuits were working out of my office, and the switching of those circuits was not under my control.

So when I found everything dead, all I could tell the custom-
777 ers during that day was that I was sorry but the service was temporarily disrupted due to labor trouble and that I especially requested their loyalty, and that they bear with us until the difficulties were ironed out and that I would appreciate it.

Q. You say that you went on strike the following day, which was Sunday?

A. No, the day on which I speak, Saturday.

Trial Examiner EICKHOFF. Saturday noon?

The WITNESS. Yes. The office closed at noon.

By Mr. EDISES:

Q. How did you happen to go on strike at that time?

A. Well, when we closed the office at 12 o'clock I encountered some of the strikers, several of them in fact, and we discussed the matter at great length. It was pointed out to me that the strike was approximately 100 per cent. One or two supervisors were still working and had promised to come out on strike later in the day.

A man my age, and who has been in the game so long, I didn't want the word "scab" attached to me, so I told them, "All right, I will go on strike this moment," and that was about 12:30 on the 5th.

Q. Ordinarily you haven't been present Saturday afternoon at the F. X. office anyway?

A. No.

Q. How about Sundays; is the office ordinarily open then?
778 A. No.

Q. You are known as a commercial employee, are you not, Mr. Phelps?

A. Well, that goes back a couple of years to the time when I was taken from the traffic payroll and placed on the commercial payroll. Outside of that particular change, it didn't make a great deal of difference in my status, or didn't change my duties, or anything. I was simply taken from the operating room, H. B.'s payroll, and put on Mr. Dewey's payroll.

Q. Who are the commercial employees, so-called?

A. Well, I would take it that Mr. Dewey would be head of the commercial department; and then there are five or six girls in his

office, and one or two solicitors; and then the personnel of F. X. office stock exchange.

Q. In other words, the "Commercial" refers to the fact that these people go out and contact the trade and try to get business, and so on, is that correct?

A. Yes.

Q. That was a part of your duties to do, was it not?

A. Yes.

Q. Do you know whether any other commercial employees went on strike?

A. I don't know that.

Q. Did you attend a picket line, were you on the picket
779 line on Sunday?

A. No.

Q. What did you do on Sunday, Mr. Phelps?

A. Oh, I ordinarily don't come down on Sunday. But I was under considerable stress. I wondered what was going on, and I called up the union hall a time or two and then I finally came down town in the afternoon more out of curiosity than anything else.

I went down to the union hall and circulated among the groups there, and then I walked over to 22 Battery and talked to various persons on the picket line there.

There were supposed to be four pickets, but there were some 20 or more strikers around there, so it was hard to tell who was picketing and who was there out of curiosity.

Q. What else did you do on Sunday?

A. Well, late in the afternoon I encountered, among other groups, Mr. Clifford and Mr. Rone and there were four or five others present.

One of them said, "Who wants to go to Alameda with us and sign up Mr. Layman and Mr. Buckley?"

One fellow said, "I am on picket duty. I cannot go."

Another one said, "Well, I have a date tonight and I cannot go."

Another one had some other excuse.

I had nothing in particular to do so I said, "Well, I
780 will go."

And he said, "You will have to pay your own way."

I said, "I guess I can spend 42 cents."

Mr. Clifford said, "When we get to Alameda we can get my car. I have only got about a dollar and I can't pay your way over."

I said, "I will pay my way over."

So we went down to the ferry building and got on a boat. On the way over we discussed our trip.

Mr. Rone said, "You know," he said, "I hope these fellows don't sign an application."

Clifford said, "Why?"

He said, "I don't know. There is something fishy about Layman going out on strike."

Mr. MERRICK. I object to this conversation as hearsay.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. EDISES:

Q. Go ahead and tell us what was said and done.

A. When we arrived—anyway, he expressed himself as to the action he was going to take, the plan he was going to pursue. He said, "I am simply going to give him the pencil and the application and if he wants to sign it, all right. I am not going to urge him to sign it because I don't think he would be a good union man."

Mr. MERRICK. I understood this had been ruled out, this
781 conversation.

Trial Examiner EICKHOFF. I thought it was a subsidiary conversation that you were objecting to.

Mr. MERRICK. This conversation he had with Mr. Rone on the way down. It seems it is not only irrelevant, but obviously quite incompetent.

Trial Examiner EICKHOFF. I agree. Do you wish it stricken?

Mr. MERRICK. Yes; I move to strike it.

Mr. EDISES. Are we going to be permitted to bring in the actual picture, what happened on this trip to Alameda? In other words, if we are not allowed to have the conversations which took place, some of those conversations involving actions which occurred in Alameda, it seems to me we will be prevented from presenting the picture fully and completely.

Trial Examiner EICKHOFF. I don't see that the conversation they may have had while crossing on the boat is material or binding on the respondent, or should be binding on the respondent. It is rather remote from any of the events which have any direct bearing on the issue.

I have already, I think, permitted testimony regarding the signing up, or the solicitation of these two men across the Bay. If you think it is material to go into that again, I will let you. Confine yourself to what took place in connection with those two men.

782 By Mr. EDISES:

Q. Will you tell us what happened after you got over on the other side and saw Mr. Layman and Mr. Buckley?

A. Well, first, we went to Alameda and got Mr. Clifford's car and went to Berkeley, or over in that direction, to Mr. Layman's house. He was not at home and his son told us where he was. We went there and Mr. Layman said, "Hello, fellows!"

Mr. Rone said, "We came over to sign you up."

And he said, "Let's go out in the car."

We went out in Layman's car and he took a package of cigarettes and passed them around and says, "How is it that I have never been asked to join the union until this moment?"

Mr. Rone said, "Well, I don't know. Everybody is waiting for somebody else to do it. I guess you are still smarting under your demotion."

He said, "No; that is all passed on. If the fellows don't want me in there as chief operator, that is up to them. I feel a lot better and

have got a lot less on my mind and, as a matter of fact," he said, "I can sleep better now with all that stuff off my mind."

We talked awhile and Rone, true to his word, took the application out of his pocket and laid it down and laid a pencil on top of it, and said, "There you are."

He took it and read it for awhile and finally signed it and handed it back.

783 Q. Did you see Mr. Buckley?

A. Yes.

Q. Did he sign?

A. Yes. Mr. Layman took us over to Mr. Buckley's house himself. It has been said on the stand here that he was very enthusiastic. I think that his wife was even more so, because she urged him to sign it without any argument; but he insisted on asking some questions about it, and these were all answered.

It has been said around the office for a good many years that Mr. Buckley was an alien and Mr. Rone asked to see his citizenship papers, and they were produced, and Mr. Rone examined them and said he was glad of that opportunity because that point was settled in his mind for all time.

Q. Now, he signed and then you returned to San Francisco, is that correct?

A. That is right.

Q. Did you do anything else of importance on Sunday?

A. Well, there was an incident which I probably should relate, because it afterwards came back to me in such a magnified and distorted form, that I think it should be related now, rather than to have the company bring it in in the form which I heard it.

784 When I first talked to Mr. Rone and Mr. Clifford, in front of 22 Battery Street, the telephone operator, by the name of Miss McKenna, came along and Rone said, "Where are you going?"

She said, "I am going to work."

He said, "What? Don't you know there is a strike on? Are you going through that picket line?"

She laughed and said, "Well, I would be tickled to death to get out of it if I could."

Someone, in fact I think I suggested that she call up and tell them she didn't like to cross the picket line.

She said, "All right, I will do it if somebody will show me where there is a phone."

So, it being Sunday, all the restaurants and cigar stores along there were closed. So the four of us walked—Mr. Clifford, Mr. Rone, myself, and Miss McKenna—walked down toward California Street to Foster's restaurant at California and Market. A man was using the phone, as we could see from the street.

We stood there for a minute and I suggested we walk down to No. 52 California. I knew there that the office was open and there was a phone there. So I said, "Let's go down to the union hall and you can use the phone there."

She said, "No, I don't want to do that."

About that time the man hung up the phone and we, all
785 of us, went into the restaurant and she called Mr. Dewey.

I heard her side of the conversation. She told him that she didn't want to cross the picket line; said she had talked to some of the boys; said she was at California and Market, Foster's Restaurant; said the phone number was so and so, and read it off the card; said "You will call me back then? All right."

She told me Mr. Dewey was going to call her back.

I said, "I know he is not; he is going to call the police."

She said, "I don't think so."

I said, "You will see."

So when the three of us got a cup of coffee we sat down and drank the coffee, and in about five minutes the police car came up and the police came in and talked to her, and stood alongside of me. I don't know whether they asked her where the fellows were or who they were or anything, because she went out with them.

We finished our coffee and left and went on to Alameda.

The next day, Monday, I stopped in front of the Postal in the afternoon and I encountered Mr. Peralta, of the Cable Department. I said, "What is new?"

Mr. MERRICK. I object to that conversation as wholly irrelevant and immaterial.

The WITNESS. It is important.

786 Trial Examiner EICKHOFF. Just a minute!

Mr. MERRICK. I think the whole previous instance was utterly irrelevant.

By Mr. EDISES:

Q. Who is Mr. Peralta?

A. A representative of the Cable Department, that is, Commercial and Pacific Cable Company, solicited for them.

Trial Examiner EICKHOFF. Was he working at that time?

The WITNESS. Yes; he was not affected by the strike.

Trial Examiner EICKHOFF. Did your conversation with him concern the strike?

The WITNESS. Yes.

Trial Examiner EICKHOFF. You may relate that conversation.

Mr. MERRICK. He said he was an employer of the Commercial & Pacific Cable Company, which is one of the competitors of the respondent, Mackay Radio, and not in any way connected with it.

The WITNESS. I was talking to him as a friend, not as a competitor, with respect to his employment, or mine, for that matter; just concerned the strike.

Trial Examiner EICKHOFF. What will this conversation tend to prove or disprove, if anything, Mr. Edises?

The WITNESS. Well——

Trial Examiner EICKHOFF. (Interrupting.) I am asking your counsel.

787 Mr. EDISES. Mr. Phelps, let's leave the conversation with Mr. Peralta out and start now with Monday and tell us exactly what——

Trial Examiner EICKHOFF. What was this girl's name, do you know?

The WITNESS. McKenna—M-c-K-e-n-n-a.

Trial Examiner EICKHOFF. She was the operator who went and phoned Mr. Dewey?

The WITNESS. Yes.

By Mr. EDISES:

Q. Let's start now with Monday, November 2, and answer my specific questions, rather than relating a running narrative.

I may state, Mr. Phelps feels he can testify properly only if he is permitted to give a running account. I am going to ask him to answer specifically.

On Monday, November 7, did you handle any traffic at all?

A. No.

Q. Did you go F. X. office?

A. Yes.

Q. What did you do there?

A. At the time the World Series games were on, and we have a broadcast radio there and a good many customers had been congregating during this period for a number of years—sort of an
788 old customer there—to listen to our radio. In fact, the radio was purchased for that purpose by Mr. A. Y. Tuel four or five years ago.

Q. Did you contact any customers of the company on Monday?

A. Yes.

Q. What did you say to them?

A. While I was there Mr. Pringle, of Fagan, Eastland & Company——

Mr. MERRICK. I object to a conversation between this witness and representatives of other companies, as irrelevant and immaterial.

Trial Examiner EICKHOFF. What will this tend to prove, Mr. Edises?

Mr. EDISES. This has a bearing upon Mr. Phelps' attitude toward the company during the period of the strike.

Trial Examiner EICKHOFF. I hardly think that is material.

Mr. EDISES. All right.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. EDISES:

Q. Did you see Mr. Rodman on Monday?

A. Yes.

Q. When did you see him, and where?

A. Well, about, I imagine it was 2:30 or 3 o'clock, right after the market closed at 2:30.

Q. Where was it?

A. At the Stock Exchange.

789 Q. What were you doing there at the time?

A. To tell the truth, I had been walking around so much I was so tired I was about ready to pass out. I was near there and I went into the office and sat down for a minute and was dialing the phone when he came in. I was going to call my home.

Q. What was said by you and Mr. Rodman?

A. Mr. Rodman—another fellow was present, Mr. Lee, an operator who was also on strike. I will correct that. He wasn't on strike. He had been released prior to the strike. He is now employed, however, by Mackay Radio in Portland, Oregon.

We were sitting there and Mr. Rodman came in and looked over at me and said, "What in the hell are you doing here?"

And before I could answer anything he said, "Get out of here and stay out. You have got no business in here."

He talked to the special policeman, whose name was Charlie Pitt, and his address is 115 Sansome, and said, "Keep this man out of this office. He hasn't any business here whatever."

Then he said to me, "Do you understand?"

I said, "Yes, sir; I understand."

About that time Mr. George Young, superintendent of the building, came up and asked what it was all about, and it was explained to him that I was not to come into the office again.

796 By Mr. EDISES:

Q. Did Mr. Rodman say anything further at that time?

A. No, not to me. He talked to Mr.——

Q. (Interrupting.) Just a minute. We just want what he said to you. Did you leave the F. X. office then?

A. I did, immediately.

Q. Were you notified at any time of a meeting which was to be held at the Hotel Bellevue early Tuesday morning or late Monday night?

A. No.

Q. When did you first learn that the strike was over?

A. About 7 o'clock Tuesday morning.

Q. How did you learn it?

A. I called the union headquarters on the telephone and asked them what was doing, and they said, "Haven't you heard?"

I said, "Heard what?"

They said, "The strike is over. You had better go down and go to work."

Q. What did you do then?

A. I immediately went to the Stock Exchange.

Q. What time did you get there?

A. About 7:30 to 7:40.

Q. What happened?

A. The special officer said, "Where are you going?" I said, "I am going to work."

791 He said, "Didn't you hear what Mr. Rodman said yesterday?"

I said, "Well, the strike is over."

He said, "Well, our instructions haven't been changed. I am sorry I cannot let you go in."

Then he said, "You had better go and see Mr. Dewey."

Q. Did you see Mr. Dewey?

A. Yes; I went in to see Mr. Dewey about 8 o'clock.

Q. Were you able to see him?

A. No; he was not in.

Q. Who did you ask for permission to see him?

A. Well, when they said he wasn't in——

Q. (Interrupting.) Who said he wasn't in?

A. The telephone operator, as I recall it. I believe she told me that he had gone home to get some sleep.

Then I asked her if Mr. Rodman was in. She said, "No; he has gone to get some sleep."

I went out for a few minutes and came back about 8:30. As a matter of fact, I went over and got a cup of coffee and came back around 8:30.

Q. Did you try to see any other officials of the company besides Rodman?

A. I am coming to that. I came back at 8:30. In the meantime the telephone operators had changed and Miss Nelson was working at F. X. At the time of the strike she was

792 working on the board at that time, and I asked her if Mr. Dewey had come in, and she said, "No."

Just about that time Captain Dodd's buzzer rang for his stenographer. Mrs. Schaugaard came in. I asked her if she was going in to see Captain Dodd and she said she was. I said, "Would you mind telling him that I am here and ask him if he will see me for a moment?"

She said she wouldn't mind that at all. She was in there some few minutes and I concluded she had forgotten, so I asked the telephone operator to phone in to Captain Dodd and word came back that he would see me in a few minutes.

Then Mrs. Schaugaard came out. I don't recall whether she said to go in or whether he phoned the switchboard.

Q. At any rate, did you go in to see Captain Dodd?

A. Yes.

Q. What was—what time was that?

A. That was around 9 o'clock.

Q. Who was present?

A. No one but——

Q. (Interrupting.) Just Captain Dodd and yourself?

A. As I recall; yes.

Q. What was said and done at that time, do you remember?

A. We exchanged the usual greetings. I want to say I have
793 never encountered a finer man than Captain Dodd is. He is a fine old man.

Trial Examiner EICKHOFF. Confine your testimony to what was said between you two with reference to the strike or your reemployment and things of that sort, because although other things may have been said, you might have exchanged greetings, pleasantries, or what-not, they have no particular bearing here.

A. (Continuing.) Well, Captain Dodd—I asked him if he knew my status and he said, "No." He said, "The only thing I know is that you are not on the list."

That was the first I had heard of the list, so I said "What list?"

He said, "Well, there is a list of men who will not be allowed to go back to work until they have been passed on by New York." He said, "You are not on that list."

I said, "Well, would Mr. Rodman know?"

First he suggested that I see Mr. Dewey, and I told him Mr. Dewey wasn't in. I said, "Would Mr. Rodman know?"

He said he couldn't answer that question; however, if I would come back about 1 o'clock he would attempt to find out something on the subject by that time. He said he expected Mr. Rodman to call in.

I returned to the city office, then across the hall, and set on the bench there with a couple of messengers for about three hours,
794 I guess, expecting Mr. Dewey or Mr. Rodman to come in.

By Mr. EDISES:

Q. Who did you see next, Mr. Phelps?

A. Well, no official. I saw——

Q. (Interrupting.) I mean what official did you see next?

A. Captain Dodd.

Q. At what time?

A. 1 o'clock.

Q. Was anything particularly said then?

A. Well, he told me that he had talked to Mr. Rodman, but that he had so many things to bring up that my case had escaped him. However, he expected another call and suggested that I come back about 3.

Q. Did you go back at 3?

A. Yes.

Q. What did you do then?

A. I opened Captain Dodd's door and there stood Mr. Rodman. Before I could say a word, he whirled around on me like he was mad, and said, "Get out of here! Don't keep coming around here." He said, "I don't want to talk to you."

Well, I didn't say a word. I simply withdrew and returned to the city office and asked about Mr. Dewey, and a few minutes later they said he had gone to the Stock Exchange.

So I went to the Stock Exchange at 3:20. This was on the 8th, you understand. And Mr. Dewey was sitting here instructing
795 another operator as to the office, and so forth. And then I said, "Hello," and he said, "Hello, Phelps."

Q. Who else was present?

A. Miss Nelson.

Q. Anybody else?

A. And Mr. Lee.

Q. Anybody else?

A. That is all that I recall. There might have been a messenger boy there.

Q. Now, tell us what was said and done.

A. He said, "I will be with you in a minute."

Yes, Mr. Hoxie was there.

Q. Who was he?

A. He was sort of a repairman, or something, around the main office.

Q. Works for Mackay?

A. Yes; he was doing something to one of the time stamps.

Q. Go ahead.

A. He said, "I will be with you in a minute."

I said, "Well, am I on the list?"

He said, "Well, I will tell you. Let's go outside."

So we went out into the lobby and he said, "All I can do is to take your application." He said, "It has been taken out of my hands. If it was up to me there would be nothing to it. It simply has been taken out of my hands. All I can do is to take your
796 application. That is what they are doing with the others."

And he said, "You get ahold of one of those application blanks and fill it out and put the time on it." He said the time was important.

So I got one of the application blanks——

Q. (Interrupting.) Just a moment. Was anything further said at that time?

A. He mentioned this McKenna incident. He said, "That McKenna incident didn't help you any and you had better write me a letter and mention that, and you had better say in the letter that you had had two or three drinks. That will sort of gloss that over."

Q. What aspect of this so-called McKenna incident was he referring to?

A. Our interception of her, and our taking her to the telephone and trying to persuade her not to go through the picket line, apparently. But you understand that the story he had in mind had been distorted from the facts somewhat.

Q. Go ahead.

A. Well, I said, "Well, there is nothing to that McKenna incident.

He said, "Well, I don't know; that is pretty serious, trying to drag the girl up an alley."

I said, "That is not a fact."

He said, "Well, that is what she says."

797 I said, "I don't belive Alice said that."

He said, "Well, she didn't talk to me at all. She talked to the old man"—meaning Mr. Rodman—"and said the police had her for half an hour and I tell you it was a good thing you weren't around because those cops were plenty sore."

And so I got one of the applications and filled it out and gave it to him.

Finally I went home.

Q. Just a moment, Mr. Phelps. Was anything said at that time about filling out anything else, anything other than the application blank?

A. Oh, yes. He asked me if I had seen McDonough and I said I hadn't.

Q. Who is McDonough?

A. That is the question I asked. He said, "He is the big shot from New York and one of Stone's right hand men and is not taking orders from anybody on the Coast." He said, "He is talking to Stone every two or three hours on the long distance phone."

Then he said, "By the way, he has a paper you want to get your name on."

I said, "What kind of a paper is that?"

He said, "Well, it is a repudiation of the ARTA. That
798 union is washed up." He said, "90 percent of the fellows have signed that."

I said, "You mean 90 per cent of the fellows that are working?"

He said, "Well, yes."

"Well," I said, "I can see where they would sign a thing like that, but I don't see where it would be to my advantage for me to sign."

He said, "A lot of them have turned in their union cards."

I said, "If that will do me any good, here is mine." I gave him my union card, which is sort of pink in color.

He said, "This isn't quite red enough. They should have made those a little redder."

I just let that pass.

Finally he told me, "Well, I am not going to take your application in to Mr. Rodman today because he just got through barking at me on another matter and I know he is pretty well upset. So as soon as he calms down a little and gets a good night's sleep he will be more amenable."

That sounded reasonable enough so I went home.

The next day——

Q. (Interrupting.) Just a moment. Did you make any other efforts to get in touch, or have an interview with Mr. Rodman?

A. None on this day, no.

The next day was the 9th. Wednesday. I went in to see
799 Mr. Dewey. He said, "If you will write a note to Mr. Rodman in long hand and put it in a plain white envelope without Mackay Radio on it, and mark it private and confidential, I myself will take it in to Mr. Rodman."

So I wrote such a note and asked him to see me for a few minutes. I told him I was waiting in Mr. Dewey's office. I waited until I knew he had gone for the day and he didn't say anything about seeing me, or acknowledge receipt of the note, so I went home.

Then I had various contacts with Mr. Dewey during that week.

Q. Anything of particular importance happen during those conversations?

A. With Mr. Dewey?

Q. Yes; with regard to your employment or——

A. (Interrupting.) Well, he mentioned the fact that I might possibly get a job, get my job back. He said, however, "You are out of the Stock Exchange for good." He said, "This fellow Duggan, down there is a graduate of the University of California and a personal friend of Stone's and he asked for your job and there was nothing in God's world we could do but give it to him."

Q. Did you ask Mr. Dewey at any of these times that you have referred to why you were not being given your job back?

A. I asked him two questions. I wrote them out in
800 advance. When I went in to see him he started telling me how busy he was.

Q. When was this?

A. This was on Wednesday, the 9th.

Q. Go ahead.

A. I said, "There are two questions."

By the way, I have related the answer to one of those questions.

I pulled out a memorandum book, and I said, "There are two questions I want to ask you and I have them written down." I said, "I want you to answer if you can and will, or if you can't answer them I want you to tell me so."

I said "The first question is this: 'What have you against me?'"

He said, "The answer to that is I have nothing whatever against you. Your work has always been of a high order and you are a valuable man over there. There is no argument there."

I said, "Well, the second question is 'What, if anything, that you know of has Mr. Rodman got against me?'"

He said, "I can't answer that because I don't know of anything he has got against you."

Then he said, "The only thing is about the stock exchange—you are out of there for good," because what I have just testified to, that that fellow was a personal friend of Stone's.

801 Q. Who was the fellow, Dugan, you mentioned?

A. He was one of the scabs that was brought out from New York.

Q. Now about this other question, what was the other question you asked?

A. They were the two questions, what Dewey had against me and what Mr. Rodman had against me.

Q. I see. When did you first see Mr. Rodman, and tell us the circumstances under which you happened to see him.

Trial Examiner EICKHOFF. Wait a minute, now. The first time—What do you mean by the first time?

By Mr. EDISES:

Q. The first interview that you had with Mr. Rodman after the strike.

Mr. MERRICK. He testified to that.

Trial Examiner EICKHOFF. He testified to that?

The WITNESS. No.

Mr. EDISES. He testified on one occasion Rodman shouted at him through a door.

By Mr. EDISES:

Q. I want to know the first formal interview you had with Mr. Rodman.

Trial Examiner EICKHOFF. Subsequent to that?

Mr. EDISES. Yes.

A. You understand the appointment I had was with Captain Dodd. I merely encountered Mr. Rodman in Captain Dodd's office. I had no idea of seeing him.

802 Trial Examiner EICKHOFF. Your counsel wants you to tell of your next meeting, contact with Mr. Rodman.

A. I spoke to Mr. Dewey about it and he said, finally, "Why don't you sit down and write a personal letter to Mr. Rodman?"

By Mr. EDISES:

Q. When was this?

A. This was on the same Wednesday, the 9th. And he said, "Tell him about your activities in the strike and how you felt, and tell him the whole story." He said, "The old man is pretty reasonable, but he is not himself right now. He has been up day and night. In fact, he can hardly speak above a whisper right now."

So I gave the matter considerable thought, and on the 14th, which would be—Let's see. Tuesday was the 7th. The next Tuesday would be the——

By Mr. EDISES:

Q. The 14th.

A. The 14th was Monday. I believe that is correct.

Trial Examiner EICKHOFF. October 14th was Monday.

By Mr. EDISES:

Q. All right, Monday, October 14th.

A. Well, Sunday, on the 13th, Sunday evening. I drafted this letter, and on Monday I write it to Mr. Rodman and mailed it Monday night and he got it Tuesday, apparently.

In the meantime, every effort I had made to see Mr. Rodman had been without success. So I had gone to the Labor Board——

Q. (Interrupting.) One moment, Mr. Phelps. I show you
803 a one-page——

Trial Examiner EICKHOFF. Show it to him and ask him if he wrote it.

By Mr. EDISES:

Q. Is that the letter you wrote to Mr. Rodman?

A. [Examining letter.] Yes; that is it.

Mr. EDISES. I offer it in evidence as the Board's next exhibit.

Trial Examiner EICKHOFF. Is that the original or a copy?

Mr. EDISES. This is the original.

Trial Examiner EICKHOFF. Is there objection?

Mr. MERRICK. Let me see it.

(Counsel Merrick examines the letter referred to.)

Mr. MERRICK. I think it is a self-serving declaration, but I have no objection.

Trial Examiner EICKHOFF. Do you object to its admission?

Mr. MERRICK. No.

Trial Examiner EICKHOFF. It may be admitted as Board's Exhibit No. 7.

(The letter referred to was received in evidence and marked "Board's Exhibit No. 7, Witness Phelps.")

By Mr. EDISES:

Q. Go ahead with your account, Mr. Phelps.

804 A. I have forgotten where I left off. Anyway, I wrote this letter on the same day that I went to see the Labor Board. I went in company with the other complainants on Monday, the 14th.

Mr. Rodman apparently got this letter—I don't see the received stamp on it—but apparently he must have gotten it the morning of the 15th because I was not at home that morning, but someone called my home and talked to my daughter and said that the office was looking for me. So I called in about noon and got hold of Mr. Dewey and he said, "Yes, where are you and how soon can you get down here?"

I said, "Well, I am downtown now and I will come over now."

He said "It is 12 o'clock now, a little after. There is no use coming now. But the Old Man wants to see you. You come in around 2 o'clock and I think he will be back by then."

I went in about 2, and about 2:25 Mr. Dewey and I went in to see Mr. Rodman. But while we were waiting, Mr. Dewey said. "Did you get your name on that list yet?"

I said, "I don't see anything to be gained by signing that thing." I said, "Those fellows in there are on the spot and naturally they will sign anything to get themselves over; but until I see my way a little further here I am not going to repudiate the union. They haven't repudiated me.

805 So we went in to see Mr. Rodman and he was very pleasant. When we went in he shook hands with me and said, "Phelps I am sorry I was rude to you the other day, but, as a matter of fact, I was rude to a lot of people. I had so damn much on my mind I just didn't want to talk to anybody."

I assured him that was all right.

He had my letter in front of him and said, "You are entitled to a hearing under the law and this is it"—under the Wagner Act, I believe the Wagner-Connery Act.

Q. Who said that?

A. Mr. Rodman. And he said, "Phelps, I haven't got a thing against you. I haven't got a thing against any man in the Mackay Radio, but that God damned ARTA, we are going to break that up if it takes every dime we have got." He said, "They are a bunch of reds and radicals and they belong up on the water front." And he got red in the face and spread it on thick about the communistic angle.

He said, "Did you know Harry Bridges was running the thing?" I said, "I have no knowledge of that."

He said, "We have had private investigators working for months and we have the whole thing right here. We know the whole story and we are not going to be dominated by a gang like that."

806 Then he said, "We were all set for this strike. We had men in the bushes out here with rifles." He said, "We expected them to try to interrupt the C. P. cable. It sure would have been hot stuff for anybody monkeying with the cable or for anybody who tried to monkey with the transmitters or cable lines. They would have been surprised from the hillsides."

I said, "I don't go in for any of that sort of stuff, Mr. Rodman." As a matter of fact, I didn't even know that anything like that was contemplated.

He said, "Didn't you know that a bunch of thugs were sent down to the airport to intercept a plane load of men coming in there?"

I said, "No; I didn't know that."

He said, "Well, we were ready for them." He said, "We diverted the plane ten minutes before it was supposed to land." And he said, "We had to protect the first section of that plane because there was a lot of passengers on there that didn't know what it was all about."

So I said, "Well, all that is news to me." And I said, "I don't see where it affects my case. I didn't take part in any of that stuff."

He said, "Well, Phelps, as a matter of fact your part in the strike was so insignificant that I didn't even once think of you until I ran across you at the stock exchange there. About all you did was go over to the east bay and force a couple of our supervisors to join the union."

807 I said, "There was no force used." I said, "Very little persuasion was used. It was the easiest sign-up that I ever witnessed."

So he said, "Well, this McKenna deal, it was that kind of stuff that hurt you, Phelps. Stuff like that we won't tolerate."

I said, "Well, that has been greatly distorted, the facts." I said, "The dark alley mentioned is California street and it is never very dark." And I said, "Nobody laid a hand on her."

I said, "I was present when the police captain was down there and told us our rights and what we could do and couldn't do, and I limited my rights during the strike to those guaranteed under the law, free speech, the right to do peaceful picketing, and the right to affiliate with a union labor organization."

Q. Are you relating what you told Mr. Rodman?

A. Yes. So we talked on that length, and he finally said, "Well, Phelps, I tell you what I will do. This whole thing is out of my hands. All these fellows on that list have to make application for reinstallment. You will have to do that. In fact, I have it right here. The application you signed, it says: 3:30 p. m., October 8th."

And he turned to Mr. Dewey and said, "What time did Dugan ask for that job?"

808 He said it was at 12:00 or 12:30.

He said, "I remember when he first got in he asked to get some rest and we told him to get rest and get down at noon. He got down about 12:00 or 12:30 and telephoned in."

He said "That is the picture, Phelps. This loyal employee—he is not a scab, by the way—he is a loyal employee and so are these other fellows. And so are those fellows that led the men back to work."

He further said, "If it wasn't for such fellows as Hatch, McLaughlin, Burtz, and a few others, you fellows might have had a chance; but you can not win when you have got fellows like that. They are all supposed to be union men, but," he said, "how do you know we haven't used a little strategy in this thing and had a few union men of our own in there to keep track of what was going on?"

I mentioned that Mr. Buckley and Layman had gone out. He said, "How do you know we didn't send them out on strike? We are bound to use a little strategy here, and a little stuff of our own. We have to fight fire with fire."

He said, "The whole thing is that this man has asked for your job over there and we have positive orders from Mr. Stone that every man on this list of strike breakers has to be taken care of. One of them asked for a supervisor's job and we had to give him a supervisor's job."

Q. Did he mention the name?

809 A. He mentioned a name, but I don't know them and I wouldn't recall the name. I don't recall the name of the man that asked for a supervisor's job. I don't know it, I won't say I know, but I have heard they did elevate one of those fellows.

Q. Never mind that. Was anything further said between Mr. Rodman and yourself at this conversation you are relating?

A. Well, that is about all. He did tell me that as soon as he got Mr. Dewey's recommendation that he would pass it on to New York by air mail, and he said, "I will recommend your reinstatement."

Trial Examiner EICKHOFF. We will recess for five minutes, and only for five minutes.

(At this point a recess was taken after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. You may proceed.

Mr. EDISES. May we at this time have the application for re-employment filled out by Mr. Phelps?

Mr. MERRICK. Unfortunately, I haven't that. His application is with Mr. Dewey. Mr. Dewey has been in bed two weeks. I will try to get it from his office

Mr. EDISES. Thank you.

By Mr. EDISES:

Q. Have you now related the substance of the conversation that you had with Mr. Rodman?

A. Well, in all important details. He gave me to under-
810 stand that he would recommend my reinstatement and would forward it to New York by air mail and probably it would be returned in the same manner, and suggested that I keep in touch with Mr. Dewey after a period of a week; that probably there would be no action taken on it before.

Q. During the conversation that you have just related, you have used the statement such as "He said" and "I said." When you referred to "he" who did you mean?

A. Mr. Rodman. Mr. Dewey didn't say a word during the whole hearing.

Q. How long were you in Mr. Rodman's office on this occasion?

A. Oh, I would say two hours.

Q. What was the next conference that you had with any official of the Mackay Radio, and when?

A. The next day. This was on the 15th. The next day. Maybe it was the 16th, but I don't know whether it was Wednesday or not.

Trial Examiner EICKHOFF. I had better give you a calendar.

(Trial Examiner Eickhoff passed a calendar over to the witness.)

The WITNESS. Yes; it was the 15th.

By Mr. EDISES:

Q. Who did you have that conference with?

A. With Mr. Dewey. I went in to see Mr. Dewey in the
811 afternoon, I should say, around 3 o'clock, and I asked him what was doing.

He said, "Say, your case is held up again."

I said, "How is that?"

He said, "You didn't tell us yesterday you had been to the Labor Board."

I said, "No one asked me that."

"Well," he said, "the Old Man doesn't feel like recommending your reinstatement in view of the fact that you have been to see the Labor Board."

He said, "Don't you think you had better withdraw that complaint?"

I said, "Well, can I use your telephone?"

He said, "Go ahead."

So I called Mr. Wagenet and I told him I was in Mr. Dewey's office and that they had told me my case was being held up because of the fact that I had complained to the Labor Board, and I said, "What do you think about it? Do you think I had better withdraw my complaint?"

He said, Mr. Wagonet, "You have no power to withdraw that complaint. You did not file it, and, therefore, you haven't the power to withdraw it." And then he said, "As a matter of fact, it doesn't make any difference anyway; if they want to reinstate you right now you would automatically be dropped from the complaint."

812 Q. Did Mr. Wagenet state who had filed it, did he explain that to you?

A. Yes. He said, "The ARTA has filed the complaint on behalf of not only yourself, but other members, and there may be similar complaints in other parts of the country, for all I know." And he said, "It is obvious that one man hasn't the power to withdraw the complaint."

Q. Did you have any further conversation with Mr. Dewey at that time?

A. Yes. I told him what Mr. Wagenet said. I said, "The director of the Labor Board said I haven't the power to withdraw that complaint and that it cannot possibly make any difference because if you reinstated me why I will automatically be dropped from the complaint."

So he said he would communicate that information to Mr. Rodman.

It subsequently developed that Mr. Rodman forwarded my application to New York and did not recommend my reinstatement.

The endorsement on Mr. Rodman's letter from New York, although it has not been introduced in evidence, but when it is, there will be found my initials on the bottom.

Mr. MERRICK. I object to the witness testifying to that letter unless he saw it.

The WITNESS. I saw it and signed it.

813 By Mr. EDISES:

Q. Go ahead.

A. It is not in evidence, but it said, from Mr. Stone, "The application is approved when a vacancy occurs."

Mr. MERRICK. I object to him stating what it said.

Trial Examiner EICKHOFF. Can you produce it?

The WITNESS. That is up to you to produce.

Trial Examiner EICKHOFF. Just a minute!

Mr. MERRICK. I don't know.

Trial Examiner EICKHOFF. If you can't produce it, and he saw it, I will let him testify as to what it said.

Mr. MERRICK. He said he saw the endorsement Mr. Stone put on it. The other witnesses have testified they didn't see it after the endorsement was put on that letter. They saw, as you remember, what is the upper half; the lower half was put on afterwards. Unless the attorney for the Board brings out his case is different from the others, I object to his testifying to it.

By Mr. EDISES:

Q. Did you see your letter of application after an endorsement had been added?

A. Yes; not only signed it, but put my initials on it and the date.

Trial Examiner EICKHOFF. When you saw it, what did it say?

The WITNESS. Mr. Rodman's endorsement, it wasn't on my application, it was on a separate sheet of paper. He said,

814 "Herewith application for reinstatement of Phelps as stock exchange branch manager, and inasmuch as his position has been filled by one of the men from New York, I don't recommend his reinstatement as branch manager."

And Mr. Stone had written at the bottom in typewriting, and signed with his initials, "Application for reinstatement approved when a vacancy occurs," and he had his initials, "E. W. S."

By Mr. EDISES:

Q. Going back just a minute, during your conversation with Mr. Rodman on the 15th, was there any reference made to the time at which you had shown up for work on Tuesday morning?

A. Yes. He asked me if I could verify that, or asked Mr. Dewey if he could. He said he couldn't. He asked me if I could, and I said "Yes."

He said, "I suggest you supplement your letter"—Pardon me—I mean, he said, "I suggest that you supplement your application with a letter setting forth what efforts you made to contact Mr. Dewey and myself earlier in the day."

Q. In other words, the application that you signed stated, the application that you signed stated you had applied for work at 3:20?

A. 3:30.

Q. Subsequently, did Mr. Rodman acknowledge that you had applied for work earlier?

815 A. He never acknowledged that to me.

(Thereupon Counsel Edises handed Counsel Merrick copy of a letter for examination.)

The WITNESS: If that is a letter, I think that is to Mr. Rodman.

By Mr. EDISES:

Q. Did Mr. Rodman state that the fact that you had failed——

Mr. MERRICK. (Interrupting.) I ask that counsel not ask further questions while I am examining this letter. May I also ask the attorney for the Board where he secured this copy?

Mr. EDISES. From Mr. Phelps, I think.

The WITNESS. It was given to me by Mr. Dewey. I would like to see it, though, to be sure it is the one I think it is.

By Mr. EDISES:

Q. Where did you get this letter, Mr. Phelps?

A. [Examining copy of letter.] Mr. Dewey gave me this.

Q. When?

A. After he showed me Mr. Stone's endorsement on that application. I said, "I thought Mr. Rodman was going to recommend my reinstatement. It says here he doesn't recommend it." I said, "What did you say?"

He said, "Well, I will show you what I said." So he gave me this letter and said "You can keep it."

816 Mr. MERRICK. I haven't the original of that, and Mr. Rodman is not here. But I have no reason to suspect that is not genuine and I have no objection to its being admitted, subject to my right to substitute the original as an exhibit if I procure it.

Trial Examiner EICKHOFF. Do you offer it, Mr. Edises?

Mr. EDISES. I offer it in evidence; yes.

Trial Examiner EICKHOFF. It may be admitted as Board's Exhibit No. 8.

(The copy of the letter referred to was received in evidence and marked "Board's Exhibit No. 8, Witness Phelps.")

By Mr. EDISES:

Q. During your conversation with Mr. Rodman on October 15th, did he mention the fact that you had failed to apply——

Mr. MERRICK. (Interrupting.) I object to that as leading.

By Mr. EDISES:

Q. Did he say anything about your having failed to re-apply on Tuesday morning as having any bearing on your refusal of re-employment?

A. He intimated that was the underlying cause for my not being taken back. When I pointed out the fact that I had, and could prove I had tried to go to work, and had called to his attention that he himself had placed a ban on me at the building, why he switched

817 to the New York angle, where these men had to be taken care of, and that this particular one asked for my job and they had no alternative but to give it to him. That is when he asked what time he had applied, and was told about 12:00 or 12:30.

Q. Mr. Phelps, will you take your job back if it is offered to you?

A. Yes.

Q. Are you qualified to do any kind of operating, whether F. X. or H. B. office?

A. No.

Q. What kind of work are you qualified for as an operator?

A. Well, I have never taken up the automatic or the tape branch of operating. That is a visual method of operation, as compared to oral.

Q. Manual, you mean?

A. Well, the manual is oral, yes, and the automatic is visual; in other words, it comes out in *in* visible signal and the manual is an audible signal; you work from audible signals.

Q. Are there any manual operators at the H. B. office?

A. You will have to ask Mr. Jorgensen about that. I go around very little.

Trial Examiner EICKHOFF. You don't know?

The WITNESS. I don't know.

By Mr. EDISES:

818 Q. Have you been employed since you lost your job at Mackay?

Q. Have you made any money at all since October 8, 1935?

A. Very little; about $5 or $6 as a Real Silk salesman.

Q. In your work at the F. X. office did you handle calls or orders from out of state points?

A. Yes. As a matter of fact, on October 4 I operated a direct circuit from the Stock Exchange to the New York office; that being Friday, and it being the practice to operate direct every Friday as certain business is filed there on that day.

Q. Do you do that regularly?

A. Well, weekly; yes.

Q. What other out of state business did you handle?

A. Well, we handle lots of Honolulu stuff.

Q. Did you handle it—did you handle it personally?

A. Yes.

Q. Have you any idea of what percentage of work you do in the handling of out of state business?

A. Well, I suppose I would say about 50 per cent of it.

Q. Do you know of your own knowledge whether, as a result of the Mackay—the failure of the Mackay Radio to employ you, any firms or customers of Mackay have taken their business away from Mackay Radio?

A. Only what these firms tell me themselves.

Q. What have you been told?

819 A. Well, some firms have shown a tremendous interest in my case here, and, as a matter of fact, I brought the business of some firms to Mackay Radio when I went with them from Western Union. It is a good deal on the basis of friendship, the same as a salesman that sells a man a Buick every year, that is, partly due to the car's qualities and partly to the personality of the salesman. As a matter of fact, when Mackay Radio opened their Honolulu circuit, I produced the first business that they had over that circuit. That was filed by the Stock Exchange itself, and I produced that through the personal friendship of Mr. George W. Wilson, who was then the floor manager of the Exchange.

Several of these firms have told me that until I get a square deal that they are not going to give Mackay any more business.

Q. Can you state what firms told you that?

A. Well, Dean Witter & Company told me that.

Q. Does Dean Witter & Company give you any——

A. (Interrupting.) I would like to tell you exactly what Dean Witter & Company told me.

Q. Go ahead.

A. They said that Mr. Dewey called them up recently and asked them why they weren't getting their business. They told him if he really wanted to know to come over after the market closed and they would tell him.

820 In the meantime they called me up and asked me who Mr. Dewey was. I told them.

He said, "I guess he is coming over to say something about you."

I said, "All right. You know me pretty well."

He said, "I'll say I do."

He told me, and is willing to testify that Mr. Dewey came over and said he was there in the interest of Mackay Radio and would like to inquire why they had not been giving him any more business.

He said, "Well, I will tell you, Mr. Dewey. It is on account of Phelps. I have known Phelps for ten years, and when you opened up the Honolulu circuit, Phelps came to me and took all that business from RCA."

Then he said, "Phelps wasn't satisfied with that." He said, "He has been on his toes every day since and——"

Mr. MERRICK. (Interrupting.) I object to that line of testimony.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Mr. Phelps, does any of the business which was given to Mackay by Dean Witter have any connection with out of state traffic?

A. Oh, yes.

Q. Will you explain that?

A. Mostly all of it is Honolulu business.

821 Q. The business from Dean Witter & Company would ordinarily go to——

A. (Interrupting.) To Dean Witter & Company in Honolulu.

Q. Do you know of any of those firms—did you request any of those firms to write letters to Mackay Radio on your behalf?

A. Yes.

Mr. EDISES. Would it be possible for us to have those letters that were written on behalf of Mr. Phelps?

Mr. MERRICK. I object to their being offered on the ground of their relevancy.

Trial Examiner EICKHOFF. I think so.

Mr. EDISES. It shows a possible interruption of interstate commerce.

Trial Examiner EICKHOFF. That wouldn't show there was an interruption to interstate commerce. You would have to prove the interruption by showing the message didn't go through, or something like that.

Mr. EDISES. That is all.

Trial Examiner EICKHOFF. Is there any objection to resuming at 1:45?

Mr. MERRICK. No.

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. Then we will resume the hearing at 1:45 instead of 2 o'clock.

822 (Thereupon, at 11:45 o'clock a. m., a recess was taken until 1:45 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 1:45 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner EICKHOFF. The cross-examination had not begun.

Mr. EDISES. No.

Trial Examiner EICKHOFF. You concluded your direct?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. Will you proceed, Mr. Merrick?

P. D. PHELPS, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross-examination by Mr. MERRICK:

Q. Mr. Phelps, are you now a member in good standing of ARTA?

A. Well, as I understand it, an unemployed operator is not required to pay dues. I haven't paid any dues since the strike so I would have to qualify my answer to that by saying I haven't paid any dues since the strike.

Q. When was the last time you did pay any dues?

A. I would say about August or September.

Q. Isn't it a fact that your union card expired on August 1, this year?

823 A. I couldn't say that, I haven't the card.

Q. It may have?

A. Yes. I turned in $5 around July, August, or September, right in there, and that would pay me for five months. That would be—August would be the eighth month; beginning at the beginning of the eighth month; and then you are allowed three months before your dues lapse entirely. That would bring it into the eleventh month, as I understand.

Q. Were you delinquent in your dues at the time you made the payment of $5?

A. Yes; sir. I wasn't delinquent, but I hadn't paid any dues previous; I don't know whether—what I will say is this: That up to August 1st, all I had paid was $5 for 1935.

Q. Your dues are $1.50 a month?

A. They hadn't been raised at that time. Beginning, I believe, October 1st, they were raised to $1.50 a month.

Q. At that time they were $1?

A. Yes.

Q. So the payment of $5 you made sometime, say July or August, was the only payment you made in respect to your dues for the year 1935?

A. Yes.

Q. What were the hours of your duties when you were employed at the F. X. office?

A. Theoretically they were from 6:45 in the morning until
824 2:15 in the afternoon without time out; but actually they were from 6:45 in the morning until 5 or 5:15 in the afternoon.

Q. You were supposed to be there at 6:45 in the morning?

A. That is right.

Q. Were you there at 6:45 in the morning of Tuesday, October 8?

A. 7 o'clock; I wasn't there until 7:30, in fact.

Q. Did you call up Mr. Dewey or make any explanation for your not arriving on time?

A. I wasn't able to contact him.

Q. Did you try to at that time?

A. Yes.

Q. Before 7:30 when you were late?

A. Yes; I called the union at 7 o'clock. When they said the strike was over, I called Mr. Dewey and the telephone operator informed me he wasn't there.

Q. When you realized you weren't going to be at the office at 6:45, did you call Mr. Dewey and advise him of that fact?

A. I tell you he wasn't there. I called him but I couldn't get him.

Q. At what time?

A. I called him at about 7:02 or 7:03 in the morning.

Q. From where?

A. From my residence.

825 Q. Where did you try to get him?

A. At the office.

Q. At his office?

A. Yes.

Q. What are his regular hours at the office, do you know?

A. His regular hours—my experience has been that they are from around 9 or 9:15 until around 4 or 4:30, but during the strike he was there at all hours.

Q. Did you know at two minutes past 7, when you phoned him, that there was no strike?

A. At 7 o'clock I called the union and they said the strike was over.

Q. Who told you that?

A. Mr. Rathborne.

Q. Mr. Rathborne?

A. Yes.

Q. Told you at 7 o'clock in the morning the strike was over?

A. Yes; said the strike—he said, "The strike is over. You had better go down and go to work and save your job."

Q. Did he say that the strike had been officially called off?
A. No, but I took it to mean that. He was the secretary.
Q. That is the only reason why you want back to work, that is, because you thought the strike was over?
826 A. That is right.
Q. You testified on direct examination that you didn't decide to go back to work until 12:30 on that day, isn't that so?
A. No; I didn't testify to that. I think you are confused with my statement that I didn't decide to go out on strike until 12:30, of October 4.
Q. That is correct. I am asking about the morning of October 4.
A. The morning of October 4?
Q. When you went to work.
A. I went to work at my usual time that morning.
Q. At what time was that?
A. 6:45.
Q. At that time did you know there was a strike on?
A. Yes. I went to work and turned on the lights as usual and set up the circuits and found everything dead, and so I walked over to 22 Battery and at that time I encountered Mr. Dewey on the sidewalk and he said, "Hello." That is all he said to me. He didn't try to persuade me to work or take any sides whatever. He just said, "Hello."
Q. What did you do at 22 Battery at that time?
A. I sat down and talked to two or three fellows and went back over to the Stock Exchange.
Q. And you left there you say about 12:30?
A. Left the Stock Exchange about 5 five 12, and then I said
827 I stayed around the lobby and on the sidewalk until 12:30.
Q. Did you notify the company at that time that you had then, for the first time, gone on strike?
A. No; I notified the telephone operator as usual and as is the custom; that is, when we closed the office we always told the telephone operator at 22 Battery we were going. On that particular day I had each one of the employees tell the operator good night so that they would know we were all there.
Q. And you performed, on Saturday morning, the regular duties that you customarily performed in connection with your office?
A. As far as were possible; yes.
Q. And at 12:30 you severed your connection with the office by declaring yourself on strike?
A. Not to the company.
Q. Just to yourself?
A. To the boys with whom I talked, the other strikers.
Q. And you remained on strike from 12:30 Saturday until what time, did you say?
A. Until I was able to get there on Tuesday. You see, the office normally closed Saturday afternoon and Sunday, and I was on strike Monday morning and I went to work Tuesday morning.

Trial Examiner EICKHOFF. Or rather, you tried to go to work.

The WITNESS. Yes.

828 By Mr. MERRICK.

Q. Who was in the group that you said persuaded you to go on strike?

A. Well, there are so many in the main office that I don't know; but out of the eight or ten that were there, I am able to recall fellows that I know. One of them was Mr. Bash, if I remember correctly; and Mr. Murphy, and Mr. Bertola. And I don't remember whether—I don't know the difference between Bartlett and Barlow. The little fellow, the one with a slight hunched back—who would that be?

Trial Examiner EICKHOFF. Just think of it yourself.

The WITNESS. There are two fellows about the same size and they look about like, and their names are similar, but one is slightly hunched backed.

By Mr. MERRICK:

Q. Those are the only people you can recall at this time that were present?

A. Yes.

Q. Where were they, at the F. X. office?

A. No; on the sidewalk in front of the Stock Exchange.

Q. In front of the office?

A. Yes.

Q. Did they call you out, or did you go out voluntarily.

A. I naturally would have to go out that way.

Q. At what time was that?

A. I would say probably 12:15.

Q. Were any of them communists, to your knowledge?

829 Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Were any of them longshoremen?

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. I show a letter dated San Francisco——

Trial Examiner EICKHOFF. Show it to counsel first, Mr. Merrick.

(Counsel Merrick hands the letter referred to to counsel Edises.)

Trial Examiner EICKHOFF. Show it to the witness, please. It is not in evidence. There is no use reading it.

Mr. MERRICK. I want to identify the letter.

Trial Examiner EICKHOFF. We will identify it if you are going to use it that way.

By Mr. MERRICK:

Q. Is that the original of the letter that you wrote to Mr. Dewey?

A. [Examining letter.] Right.

Mr. MERRICK. I offer the letter in evidence.

Trial Examiner EICKHOFF. Any objection?

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. It may be admitted as Respondent's Exhibit No. 6.

(The letter referred to was received in evidence and marked "Respondent's Exhibit No. 6, Witness Phelps.")

830 By Mr. MERRICK:

Q. You state in this letter: "The group who waited on me on Saturday afternoon were striking operators of longshore workers."

Were any of the men whose names you have given a few minutes ago longshore workers?

A. No.

Q. But you are quite sure there were longshore workers there?

A. I assumed they were longshore workers. It was half a dozen fellows in overalls, and cargo hooks sticking out of their pockets. That was my basis of the assumption.

Q. How many were there in this group all together?

A. Of those that I knew, three or four; and those that I had seen before, I would say there were eight or ten, or a dozen; I don't remember as I didn't count them.

Q. About a dozen all together?

A. Yes.

Q. Among them were men in overalls with hooks sticking out of their pockets?

A. Yes. None of them said anything. They just stood around.

Q. When was it you said that Mr. Rodman told you to leave the F. X. office?

A. On Friday the 7th—Friday the 5th, I should say. That was on Monday the 7th, was when it was.

Q. Monday the 7th?

A. Yes.

831 Q. Were you on strike at that time?

A. Yes.

Q. Did you think that a striker down—do you think that a striker has any business being on company property during the strike?

Mr. EDISES. I object to that question as calling for his conclusion.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. You had no other reason for going to the F. X. office than that you felt tired and you happened to be near there and you thought you would go in and rest?

A. That is correct.

Q. Did you make any telephone calls at all while you were there?

A. Yes.

Q. Who did you call?

A. My wife.

Q. You hadn't called her when Rodman came in?

A. I had made the call.

Q. Did you listen to any conversations going on between other parties while you were there at the F. X. office, over the telephone?

A. I believe one or two customers called in while I was there.

Q. But you didn't pick up the telephone to hear conver-
832 sations that were going on between other parties at the main office of the company?

A. That would not be possible with that equipment.

Q. You didn't go there for that purpose?

A. Absolutely not.

Trial Examiner EICKHOFF. Was this the F. X. office or the H. B. office?

The WITNESS. F. X.

By Mr. MERRICK:

Q. But there is a telephone there that ties into the switchboard in the H. B. office, isn't there?

A. Yes; three lines.

Q. I take it then, Mr. Phelps, that you decided the strike was over, not because of any particular percentage of men that had gone back to work, but merely because the secretary of the local told you it was over; is that right?

A. True.

Q. It is true, isn't it, Mr. Phelps, that the first time you actually discussed getting your job back, with Mr. Dewey, was on Tuesday afternoon, October 8th, at about 3:30 in the afternoon?

A. That is true.

Q. And Mr. Dewey was the man immediately superior to you in the organization who had the power, as you understood it, to hire and fire somebody to take your place?

A. That is right.

833 Q. Were you an active member of ARTA?

Mr. EDISES. I object to that question as calling for a conclusion, Mr. Examiner.

Trial Examiner EICKHOFF. I think I have allowed similar questions and I will allow it.

A. Well, activities vary; ideas of activities vary. I attended the meetings with fair regularity. I missed some of them.

By Mr. MERRICK:

Q. Were you on any official committees?

A. No.

Q. Did you ever hold any office?

A. No.

Q. Were you one of those who assisted in organizing ARTA, the local chapter?

A. Just to the extent that I have testified this morning; that a couple of operators who were working for me, I asked them if they

belonged, and they expressed an interest in it, and I told them where and how to affiliate.

Q. Were you a strike captain?

A. No.

Q. Did you consider yourself one of the ring leaders in the strike?

A. No.

Mr. EDISES. I object to that question as calling for a conclusion.

834 Trial Examiner EICKHOFF. It has been answered.

By Mr. MERRICK:

Q. I think there has already been introduced in evidence a letter dated October 14, 1935, which you wrote to Mr. Rodman. That is correct, isn't it?

A. Yes, sir.

Q. Did anyone assist you in preparing that letter?

A. No one at all.

Q. Did anyone assist you in preparing this letter just introduced as Respondent's Exhibit No. 6?

A. No one assisted me in preparing any letters.

Q. When did you first make your complaint with the Labor Board, to the Labor Board?

A. October 14th.

Q. That is the date of this letter that I just mentioned, addressed to Mr. Rodman?

A. Yes.

Q. But you wrote this letter before you went to see the Labor Board?

A. I drafted it Sunday, the 13th.

Q. Did you submit it to anybody there before you sent it in?

A. No. In fact, I gave them a copy of it this morning for the first time.

Q. Did you file a formal complaint?

A. I filed nothing.

Q. A complaint was made through your union, is that correct?

835 A. Yes.

Q. Did you file any charges with your union as a basis on which they filed their charges with the Board?

A. Simply a statement of fact, an oral statement, that I had been denied the right to go back to work.

Q. To whom did you make that statement?

A. Mr. Rathborne.

Q. And he is the secretary?

A. Yes.

Q. And he is the one who filed the charges with the Board?

A. I believe so.

Q. Have you ever received gratuities or Christmas presents from various members of the Stock Exchange made to you in your capacity as manager of the office?

Mr. EDISES. I object to that as incompetent, irrelevant, and immaterial.

Trial Examiner EICKHOFF. I will sustain the objection unless you can show some relevancy there.

Mr. MERRICK. Well, I understand that the charge against this man, that is, against the company in respect to this man, is that he was refused reemployment solely by reason of his membership in the union. I think that any questions that will bring out the true facts in regard to that situation are admissible.

Trial Examiner EICKHOFF. I don't think that is proper
836 cross examination of this witness. I will sustain the objection.

Mr. MERRICK. Also, I have the further purpose in mind that on direct examination there has been some tendency to show that Mr. Dewey was very active in support of the application of this particular witness. I want to show there was some special reasons why Mr. Dewey was active in support of this witness' application.

Trial Examiner EICKHOFF. I should think that would be part of your affirmative case.

Mr. MERRICK. I don't see what the Examiner has in mind.

Trial Examiner EICKHOFF. If you want to tie in a relationship between Dewey and this man now, go ahead.

Mr. MERRICK. That is what I have in mind.

Trial Examiner EICKHOFF. But not Christmas presents from members of the Exchange.

Mr. MERRICK. That is the tie-in, if you will permit me to say so.

Trial Examiner EICKHOFF. Mr. Dewey, is he a member of the Exchange?

Mr. MERRICK. No.

Trial Examiner EICKHOFF. If you want to ask him about his relations with Mr. Dewey, go ahead.

Mr. MERRICK. I would like to have him answer this question first.

837 Trial Examiner EICKHOFF. As to whether received presents from members of the Exchange?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. I would sustain the objection to that question.

Mr. MERRICK. Then you are excluding my second question, which you say that you will admit. I submit that the Examiner has permitted the attorney for the Board to ask questions that are absolutely irrelevant, and as to matters about which the witness is 100 percent incompetent to testify to, without definite assurance on the part of the attorney for the Board that he will tie it up afterwards.

I am stating I am going to tie this up, and you say you are willing to admit it, and then you exclude it.

Trial Examiner EICKHOFF. Go ahead and ask him about Mr. Dewey.

Mr. MERRICK. That is the first question of a series of questions necessary to show the tie-up with Mr. Dewey.

Trial Examiner EICKHOFF. The objection to that question is sustained.

Mr. MERRICK. Let's see how you treat this one:

By Mr. MERRICK:

Q. Have you ever divided with Mr. Dewey any gratuities that you have received from members of the Stock Exchange?

838 Mr. EDISES. I object to that question on the ground it is incompetent and extremely irrelevant.

Mr. MERRICK. I hope the Examiner sustains your objection.

Trial Examiner EICKHOFF. Sustained.

Mr. EDISES. Thank you very kindly.

Trial Examiner EICKHOFF. At the request of Mr. Merrick.

Mr. MERRICK. I did not request it.

Trial Examiner EICKHOFF. You said you hoped I would.

Mr. MERRICK. I asked the question in good faith, both of them, and I desire to have the answers appear on the record.

The WITNESS. I have no objection to answering the questions, for that matter.

By Mr. MERRICK:

Q. Mr. Phelps, do you know of any complaint ever having been made by the secretary of the San Francisco Stock Exchange to the company in regard to your activities and services at the F. X. office?

A. No. Are you referring to the secretary?

Q. Yes; the secretary of the San Francisco Stock Exchange.

A. Do you know who the secretary is?

Q. I am questioning you.

A. Well, the answer is no.

Q. You don't know that the Secretary of the San Francisco Stock Exchange requested Mr. Rodman to discharge you, and insisted that it be a complete discharge and not merely a

839 transfer from this office to some other office of the company?

A. No.

Q. If he did, you don't know of any reason for it?

Mr. EDISES. I object to that question as hypothetical and speculative.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. What is the name of the person that—what is the name of the person with Dean Witter & Company who told you that he was not going to give any more business to Mackay Radio because of their failure, its failure to reemploy you?

A. I decline to answer that question.

Trial Examiner EICKHOFF. I am afraid you will have to answer that question, Mr. Phelps.

The WITNESS. As a matter of fact, I called the man this morning and asked him if he objected to me mentioning his name, and he said he just as soon I wouldn't.

Trial Examiner EICKHOFF. I am sorry; if you mentioned the individual, you cannot very well refuse to identify him.

The WITNESS. There are two such persons, Mr. Robert L. Platt and Mr. John J. Quinn.

By Mr. MERRICK:

Q. What positions do they hold?

A. Mr. Platt is a member of the Exchange and a partner of the firm.

840 Q. Mr. Platt is a partner?

A. Yes.

Q. How about Mr. Quinn?

A. He is in the bond department. I don't think he is the head of the bond department, but he is one of the treasurers.

Q. How many partners are there in Dean Witter & Company?

A. I am not prepared to say as to that.

Q. Mr. Platt is not the only one?

A. No.

Q. Does Mr. Platt, to your knowledge, have control of the telegraph files of that office?

A. Originating on the floor, yes.

Q. Do you know whether or not he did cease to give his business to Mackay Radio?

A. No; only had his word for it.

Q. You would be surprised if the business from that firm has increased substantially since you left the F. X. office?

Mr. EDISES. I object to that question as calling for his conclusion, at some hypothetical situation.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Did you ever tell any officer of Mackay Radio that if you were not reinstated you were going to call on Mackay Radio customers and try to persuade them to give their business to other companies?

A. Not in so many words. Mr. Dewey suggested that I go
841 to see competing companies, and said he would give me a fine recommendation.

I said, "In case I go to another company I might do you some damage over here."

He said, he didn't doubt it. He would consider that my privilege.

Q. Did you or did you not threaten to use your best efforts to transfer the business of clients of Makay Radio to some other companies if you were not reemployed?

A. Positively not.

Q. You did not?

A. I did not; except what I stated here.

Q. Did you ever make any attempt to induce customers to use other companies?

A. I have not; quite to the contrary. You refused to have those letters in this morning and they show——

Trial Examiner EICKHOFF. You have answered the question.

By Mr. MERRICK:

Q. I take it then, Mr. Phelps, you have not been active in the support of the boycott against Mackay Radio?

A. I have not.

Q. Have you been out of sympathy with it?

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. Sustained.

842 By Mr. MERRICK:

Q. Did you go down to the airport to meet the men that flew to San Francisco on the morning of Tuesday, October 8?

A. I did not.

Q. Do you know who did?

A. No.

Q. You didn't investigate the sending of anybody down there, or take any part in sending them down?

A. Not in the least. I was invited.

Q. Who invited you?

A. Mr. Hatch.

Q. Who was with him when he invited you?

A. I don't recall anyone with him. As a matter of fact, he was the one that intended to go, and later told me that he was afraid of an accident and didn't think he had better go.

Q. Did you hear any discussion about employing thugs to go down to meet that airplane?

A. I heard talk about it around on the sidewalk in front of 22 Battery.

Q. You don't know whether any thugs were sent down there or not?

A. Only what Mr. Dewey told me.

Q. What did he tell you?

A. He said that a carload of—I forget what he called
843 them—whether thugs or what, he said there was a carload, I think he said a carload, from the waterfront, if I remember correctly, had gone down there.

Q. For what purpose, did he state?

A. To intercept the scabs.

Q. Prevent them from coming up to the H. B. office?

A. I assumed that was their intention. When we discussed it, however, it was intended to get pictures of them and try persuasion rather than rough stuff. We had no idea of—we want you to understand that the police had been down there and told us what our rights were, and at no time was our right to peaceful picketing abridged.

Q. And you were in favor of keeping within the limits?

A. I didn't say I was in favor; I said our talk at no time—at no time did I indicate I would go down or be willing to go down. I

wouldn't have been a party to it in any case. I was not on the picket line and was not a picket captain. The seat of the trouble was in the H. B. office and I wasn't on their payroll and didn't report to H. B.

Q. You didn't serve on the picket line at all?

A. I was supposed to picket the F. X. office and I think I did the company more good than I did the union.

Q. Was that intentionally?

A. Yes.

Q. You weren't trying to help the union?

844 A. I was trying to help myself.

Q. Whether or not it had a bad effect on the activities of the union as a whole or upon the welfare of your fellow employees?

Mr. EDISES. I object to that as speculative and argumentative.

Trial Examiner EICKHOFF. I will allow the question.

A. My prime motive was to protect my job, protect my interests, both from the company's standpoint and from the union's standpoint. I had cast my lot with the union and as long as they conducted their strike fair, why, I intended to play fair with them. And I must say, during the period of the strike, as far as I am concerned, the company played fair with me. And that is the reason I played fair with them.

By Mr. MERRICK:

Q. Didn't you think the interests of the company and the interests of your union were somewhat in opposition during the strike?

A. Conflicted, yes; I thought so. It is a matter of opinion.

Q. You said you cast your lot with the union when you went on strike at 12:30?

A. For myself, but at the same time I didn't desert the company's interests because I answered every telephone call that came in

845 and answered in a courteous manner and asked their indulgence for the duration of the strike; told them the business was interrupted. There was no disputing that the service was interrupted.

Q. But although you cast your lot with the union, you felt on Monday, or on Saturday morning, that it was to your interest to serve the interests of the company rather than the interest of the union?

A. Yes. You hardly ever see a store close up in the middle of the day without putting an explanation on the door, "Out to lunch" or "Back in a few minutes" or something of the sort. I didn't want to close the office up and turn off the lights, with no one knowing what the trouble was.

Q. I think you made this fairly clear. Let me ask again: Were you one of the promoters of the strike?

A. Absolutely not.

Q. Were you present when any vote was taken in regard to the strike?

A. I was present at the meeting of October 4th, but not on September 13th.

Q. But on October 4th no vote was taken on the strike at that time?

A. I am not prepared to answer that question yes or no. We voted on one or two resolutions there. You would have to refer to the minutes. I don't recall. As I recall it, as I do recall it, it was all cut and dried at that time.

846 Q. Do you know whether minutes were kept of this meeting of October 4?

A. No; I don't. It seems to me like that was more or less of an informal meeting. We were supposted to meet on the first Friday every month, and I think that—well, that certainly was the first Friday. It is possible that minutes were kept.

Mr. MERRICK. Can counsel for the Board advise whether or not minutes were kept at this meeting?

Mr. EDISES. Weren't those minutes submitted to you?

Mr. MERRICK. No. You were going to produce them. One day you had them here and I asked to have them submitted to me at the end of the session and I haven't seen them.

Mr. EDISES. I am sure we turned them over either to Mr. Merrick or to Mr. Livingston.

Mr. MERRICK. I haven't seen them. If I haven't requested it before, I would like at this time to request all of the minutes of the San Francisco Local No. 3 of ARTA during the whole period covered by the testimony of the witnesses for the Board; and also I would like to have them produce all literature which was issued either by the National Association of ARTA or by the San Francisco local in regard to the strike and the boycott.

Will those be produced as soon as convenient?

847 Mr. EDISES. We haven't any of that material, or any material such as you speak of, with the exception of possibly one pamphlet.

I believe you have that literature.

Mr. MERRICK. I have quite a lot of it. Your witnesses, although they say they have been active members, according to your own testimony have been active members of ARTA and have held offices in that Association, yet they claim never to have seen this literature before. I think that since you represent this association you should be able to produce what the Association admits to be its official literature on these two subjects.

Mr. EDISES. Well, I don't know about the literature that you are speaking of. Moreover, I think that your request is certainly as general, if not more so, than some of the requests that I made.

Suppose you limit it by telling specifically what you want.

Mr. MERRICK. I think I have described it quite accurately. First, as to the minutes. Is there any objection to the production of the minutes?

Mr. EDISES. No objection whatever. We discussed with Mr. Livingston, and probably yourself, the question of what minutes were referred to.

Mr. MERRICK. I would like to see them all. Before we only
848 specified the minutes of the meetings referred to in the testimony of the witnesses called by the Board. Now I would like all the minutes covering that whole period.

Mr. EDISES. What period, specifically, are you referring to?

Mr. MERRICK. Well, the period from February 1935 to December 2, 1935.

Well, I am willing to limit it to the period from May 1935 to December 2, 1935.

Mr. EDISES. I don't think there is any objection. The only thing is that there are a lot of those minutes that have no bearing on the matters involved. If you want them for the purpose of fishing, to find out what material you can find, I don't think that is within your rights.

Mr. MERRICK. Do you decline to produce that?

Mr. EDISES. On the contrary, I am glad to produce them under the terms that we had arranged with Mr. Livingston, namely, that we submit them to the Examiner and if he feels that there are certain matters in there that ought properly to be in evidence——

Mr. MERRICK. (Interrupting.) This is not connected with offering them in evidence.

Mr. EDISES. (Continuing.) Then do so.

Mr. MERRICK. I am interested, if not considerably more so than you are, in preventing irrelevant and immaterial matter get-
849 ting in the record. I am certainly not going to offer in evidence any minutes which I do not think are material and relevant.

Mr. EDISES. If they are material, we have no objection to your having them, Mr. Merrick.

Mr. MERRICK. I ask, first, that all the minutes be produced for my examination. Will you agree to that?

Mr. EDISES. I am willing to bring in any minutes regarding any meeting that has been testified to.

Mr. MERRICK. I ask for all meetings during that period.

Mr. EDISES. You want them on the ground that the minutes are the best evidence of what went on in the meetings? Isn't that your theory?

Mr. MERRICK. I think that is one of them.

Mr. EDISES. If you want them for that reason, what objection do you have to our bringing in the minutes of those meetings regarding the meetings that were testified to?

Mr. MERRICK. I am not willing to take upon myself the responsibility of selecting just the ones that have been referred to. The witnesses for the Board have mentioned one date for one thing, and another witness has mentioned another time and a different date, and apparently referring to the same meeting.

Mr. EDISES. Specify what you want.

Mr. MERRICK. I have asked for the minutes of all the meetings during the period, this period.

850 Mr. EDISES. We cannot do it just to give you an opportunity to go through a lot of material for purely a fishing expedition. If you want them as the best evidence for what has been testified to, I have no objection to bringing those minutes in.

Mr. MERRICK. I am not at this time going to modify my request as suggested by counsel for the Board.

Mr. EDISES. I want to go on record as offering to produce the minutes of any meeting that has been testified to by any witness.

Mr. MERRICK. Then you decline to produce those that I have requested?

Mr. EDISES. I don't know what you are requesting.

Mr. MERRICK. All of the minutes of the meetings from May 1935 to December 2, 1935. I ask counsel for the Board to state his position on that, either yes or no.

Mr. EDISES. Then your request is limited to the minutes of meetings from May 1935 to December 2, 1935. We will produce them, if available.

Mr. MERRICK. I now ask for the literature that has been published and printed, and mimeographed, or otherwise prepared, by the American Radio Telegraphists' Association, either by the National headquarters, as far as they are available, or by the San Francisco

851 Local No. 3, in regard to the strike and boycott against Mackay Radio and associated companies.

Mr. EDISES. Will you state the purpose for which you want that literature?

Mr. MERRICK. I will state one of the purposes is to show the way in which the strike was called, whatever official action has been taken by the Association in connection with its termination, the extent of the boycott and the members of the ARTA upon which the boycott was purported to be binding.

Mr. EDISES. I suggest that—I am afraid that that request is altogether too general. If you want to know how the strike started, and what happened at their meetings, and so on, you can get that out of the minutes.

What is the point of asking for a lot of literature?

Mr. MERRICK. The point is clear enough to you. I have offered quite a number of documents that your witnesses have been unable to identify, and I ask you for what you regard as the official literature.

Mr. EDISES. You are leaving that to my opinion. If you want to specify the documents you want, I will make a search for them. You cannot fish for everything that this organization ever put out and go through it and see what you want.

Mr. MERRICK. Then that request is declined?

852 Mr. EDISES. I stated my position.

Mr. MERRICK. I am willing to let it stand whatever way you want it. You decline to produce them?

Mr. EDISES. If you will ask for any specific document, identifying it sufficiently, I will produce it.

Mr. MERRICK. I regard this as a specific identification. And if you are going to take this attitude, I am going to reserve the right to ask you to identify your documents, even though I know what they are, and I am going to give you the same answers.

If you are going to play ball that way, all right.

Mr. EDISES. I threw the ball to you first and you refused to catch it in that respect.

Mr. MERRICK. All right.

By Mr. MERRICK:

Q. You don't recall, Mr. Phelps, whether or not you voted on the ballot that was taken at a meeting on October 4 on the question of whether or not you would go out on strike?

A. There was no such vote taken on the 4th. It was simply a vote of confidence, as I recall it, in Mr. Salisbury and Mr. Pyle, who stated in a telegram that was read before the meeting, that the boys in New York had accepted Mr. Stone's challenge and were going on strike at 3 a. m., and asked if the West Coast concurred in that.

That probably would amount to the same thing, but it
853 wasn't a strike vote. It wasn't called for in so many words.

Q. But you understood that the effect of voting on that ballot was to express yourself as either in favor or opposed to a strike here in San Francisco?

A. Yes.

Q. How did you vote on that ballot?

A. I voted with the majority. In fact, I think it was unanimous.

Q. You voted in favor of it?

A. Yes.

Q. Then after having voted in favor of it, you had some doubt as to whether you were going to go out on strike?

A. Yes, I did. I certainly didn't feel like going out on a strike without an explanation to the customers, who were also friends.

Q. In other words, you voted for the strike for every one else to strike at that time but yourself?

Mr. EDISES. I object to that as it is a speculative question and argumentative.

Trial Examiner EICKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF Sustained

854 Mr. MERRICK The Examiner still recalls this is cross-examination?

Trial Examiner EICKHOFF. Well, you want him to confirm an argument of yours. That is not a question.

Mr. MERRICK. That is a fair argument or conclusion—I want to know if it is a proper conclusion.

Trial Examiner EICKHOFF. You are not supposed to argue with the witness, and you know that.

Mr. MERRICK. On cross examination I am entitled to question him as to the consistency of some of his answers.

Trial Examiner EICKHOFF. You want him to put his stamp of approval on a proposition that you made to him.

By Mr. MERRICK:

Q. Do you recall telling Mr. Dewey over the telephone at one time during, or shortly after October 7, that unless you were reinstated promptly, you were ready to "pull the pin?"

A. Yes; I would like to explain that though, unless you are going to ask for it, because I assume you know what is meant, he told you what is meant, and I want it in the record as to what I meant. I had some life insurance that would lapse at the end of October and if this was going to be a long drawn-out affair, and I was going to be turned down by competing companies after they had talked to Mr. Dewey, which later developed to be a fact, why I didn't propose to have a black list put in effect in San Francisco on me to keep me out of work indefinitely.

855 Q. What did you mean by "pull the pin?"

A. What do you think?

Trial Examiner EICKHOFF. Please answer the question.

A. I meant I was going to collect the life insurance, if you want to know.

By Mr. MERRICK:

Q. Did you ever tell Mr. Dewey over the telephone that Mr. Dugan had better watch out that he was slated for some violence?

A. Told Mr. Rodman, not Mr. Dewey, that over the phone. I didn't say he had better watch out. What I did say was, "Some of these fellows will probably meet with violence and if some of them should happen to meet with violence, I don't want to be blamed for it." That is what I told him.

Q. You had reason to believe that there might be violence to some of these men?

A. Yes; I read in the paper that day where a scab had been floating in the Bay and it said he had been dead ten months.

Q. Did you have anything to do with the attack on Mr. McLaughlin?

A. No.

Q. Did you know anything about it prior to its taking place?

A. No.

Trial Examiner EICKHOFF. Do you know anything about it

856 now?

The WITNESS. Only what Mr. Dewey said; that he was set upon and beaten up.

Mr. EDISES. I want to object to such testimony, such questions, as hearsay. I believe the same objection has been made to my questions.

Mr. MERRICK. I am willing to try this case on strict rules of law and evidence, but I am unwilling to permit you to go into hearsay and not be permitted the same privilege on cross.

Mr. EDISES. My understanding was that——

Trial Examiner EICKHOFF. Reserve your objection until a question is put, because there is nothing before us to argue about right now.

Mr. EDISES. All right.

By Mr. MERRICK:

Q. Do you remember having a certain conversation with Mr. Tuel, in Mr. Rodman's office, in which you demanded an increase in salary, and when Mr. Tuel said he was unable to grant it, launching into considerable tirade against the company and going out and slamming the door in Mr. Tuel's face?

The WITNESS. I object to that question.

Mr. EDISES. Fix the time and place.

Trial Examiner EICKHOFF. When was it, approximately?

By Mr. MERRICK:

Q. Do you know the instance?

857 A. Yes, but I object to the distortion of the facts.

Q. When was it?

Trial Examiner EICKHOFF. Let me explain this to the witness: If the question indicates some situation which didn't exist, and counsel asks if you remember such an incident, why the answer is no if you don't remember such an incident. However, I do not want you to become over-technical.

The WITNESS. I remember the incident, but it certainly doesn't conform to his description of it. That has all been explained and the explanation has been accepted.

Examination by Trial Examiner EICKHOFF:

Q. All right, now, you give your recollection of the incident.

A. Shortly after the committee that was testified to here, that went up——

Q. (Interrupting.) About when was this?

Mr. MERRICK. June 1934, it was, or July.

A. Approximately, yes.

By Trial Examiner EICKHOFF:

Q. Where did this meeting take place?

A. In Mr. Rodman's office.

Q. Who was there?

A. Mr. Rodman, Mr. Tuel, Mr. Dewey, Mr. Mathison, and myself.

858 Q. What took place?

A. Shortly after this committee—if this is necessary—had completed negotiations with Mr. Tuel for the increase, and even prior to this committee meeting—in fact, it was on April 17 of 1934, I had written Mr. Dewey asking for the re-establishment of my wage differential, which this 6 per cent increase to which I referred this morning had not adjusted. I was under somewhat the peculiar position of receiving less pay as a manager than the operators were receiving as Class "C" operators.

Mr. Dewey had forwarded this to Mr. Rodman and, subsequently, to Mr. Tuel. And about the time now of this meeting in June—I think it was, sometime in June—Mr. Tuel sent for me, or some one sent for me, and those were present to whom I referred.

We went over my letter, and although Mr. Tuel is a very fine man, I seemed to have walked into a proposition that had all been thrashed out in advance, and I soon saw that I was——

Q. (Interrupting.) Just tell us what happened and let us draw our conclusions as to the facts.

A. All right. I stated my position and he stated his. His was that he had come out to the Coast with a certain amount of money allowed for increases, and that had been used up and there
859 was nothing left, and that being true, that he couldn't offer me ten cents by way of adjustment. He said that a general increase of 4 per cent was in prospect sometime after the 1st of September, and that if I didn't like it, the woods were full of capable branch managers.

He said there were three avenues of ascension in the company:

One was outstanding service in the engineering field.

Another one was outstanding service in the traffic field.

Another was outstanding service in the commercial field.

He said that if I felt that none of those avenues were open to me, that the thing for me to do was to accept the lowest pay and the least desirable hours in the main office and try ascension through some other route.

That incensed me, as it naturally would, after the——

Trial Examiner EICKHOFF. Never mind that part, "as it naturally would."

A. (Continuing.) It became apparent to them that I was incensed, and I called Mr. Tuel's attention to the fact that there was still another avenue of ascension which he had failed to enumerate, and that was the favoritism route. I pointed out certain discrimination of favoritism that is evident, and is still evident, and he grew incensed and he said the conference was over.

860 There was a strong wind blowing. The window was just about a foot and a half away, and I opened the door, which is controlled by one of those door checks, and I gave no thought to it, and I just opened it and walked out. The wind took charge of the door and slammed it.

I was told, a week or so afterwards, that everything would have been all right if I hadn't slammed the door.

I told Mr. Dewey then that I didn't slam the door, and he said he was glad to know that and he would explain it to Mr. Rodman as he felt very much put out about it. He said he would also like for Mr. Tuel to know that I didn't slam the door.

I don't slam doors.

861 Q. I think that was an answer to the Examiner's question.

A. Also yours.

Q. That is the full story of the incident as you recollect it?

A. Yes.

Q. Did you exchange any words with Mr. Tuel as to what you thought of him?

A. Not of him; no.

Q. Or the company?

A. They corrected conditions that I criticised.

Q. You used somewhat violent language at the time?

The WITNESS. Violent, or vile?

Q. Violent. I didn't say vile.

A. I talked pretty much as I have talked here the last few minutes. I don't know how violent you call that. I didn't use any profanity or thing of the sort.

Q. Were you present at a meeting at the ARTA hall Friday, November 8?

A. November 8, this year?

Q. This year?

A. Yes.

Q. Who presided at that meeting?

A. I have to explain this a little.

Q. On Friday, October 8?

Trial Examiner EICKHOFF. Just a minute! Can't you say
862 who presided and then give any explanation? If nobody presided, nobody that you know of—We are getting the record awfully full of your meditations.

A. No. I really can't say who presided at that meeting. Ordinarily I would think it would be Salisbury.

Trial Examiner EICKHOFF. Never mind; if you can't remember, you can't remember.

By Mr. MERRICK:

Q. Did you take any part in that meeting?

A. Slightly.

Q. What did you say there, do you remember?

A. Something along the lines of my testimony. I related Mr. Rodman's—my interview with Mr. Rodman—I wanted it known that I didn't arrive at the meeting until eight o'clock; and was an hour late getting there.

Q. As near as you can recollect, what did you say?

A. Just what I said——

Q. (Interrupting.) Can you repeat it?

A. Mr. Rodman said we would have had a fair chance of winning the strike if it had not been for the loyalty of some men. He enumerated those from New York and he mentioned three or four others—Mr. McLaughlin, Mr. Hatch, Mr. Burtz, and I think that possibly there was one or two other names that I don't recall.

Q. That is all you say that Mr. Rodman said? That they were loyal to the company, is that right?

863 A. Well, I might have——

Q. (Interrupting.) Didn't you say that Mr. Rodman had told you that the company had paid the initiation fees?

A. He said, "How do you know we haven't?"
Q. Didn't you tell that Mr. Rodman had paid the initiation fees?
A. He said, "How do you know we haven't done that?"
Q. That is what you repeated at this meeting?
A. Yes.
Q. Have you any reason to believe that Mr. Rodman paid the dues?
A. I certainly know that he didn't pay Mr. Buckley's fees.
Q. Have you any reason to believe that they have paid the initiation fees for these men that you have named?
A. No; I have no reason to believe that.
Q. Or the dues, either?
A. No reason to believe that.
Q. Did you witness any rather unusual procedure at this meeting in the nature of an attack on an individual who was present?
A. I did not.
Q. You didn't see anyone attack Mr. Burtz at that meeting?
A. I did not. If I remember correctly, Mr. Rathborne presided at that meeting. Just trying to remember.

Q. Have you been to call on Mr. Cook with a view to having
864 him open an office in the Stock Exchange Building to compete with Mackay Radio?

Mr. EDISES. I object to that question. I don't believe that the question has any particular bearing on the discharge of Mr. Phelps, and his refusal of re-employment. What if he did, assuming that he did? I don't know whether he did or not.

Trial Examiner EICKHOFF. Well, I don't see that it has any bearing on this cross examination unless it shows that he made some inconsistent statement.

Mr. MERRICK. Well, he has testified he is ready, willing, and anxious to take back his job with Mackay Radio. Now, if his activities are inconsistent with an attitude of willingness to go back to employment I think that we should be entitled to question him on that.

Trial Examiner EICKHOFF. That is true. Can you answer that?

Mr. EDISES. I fail to see that that is inconsistent with his willingness and desire to go back to work.

Trial Examiner EICKHOFF. Well, that alone wouldn't be, I think.

A. The answer is "No." I have explained that I tried to see Mr. Cook, and he was ill; so I didn't see him.

By Mr. MERRICK:

Q. Try to see him for what purpose?

A. Tried to see him for the purpose of getting employment,
865 but my reasons were never stated because I didn't see him. If you care to hear him I'll state them now. [Laughter.]

Trial Examiner EICKHOFF. No, you don't need to.

By Mr. MERRICK:

Q. Reason for not getting the employment, or reason to desire the employment?

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. Reasons for desiring employment. It is not responsive, and please put your next question.

By Mr. MERRICK:

Q. In your opinion, are you indispensible to the company?

A. Absolutely not.

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. Too late.

We will adjourn until 3 o'clock.

(At this point a recess was taken after which proceedings were resumed as follows:)

Mr. MERRICK. Are you ready to resume?

Trial Examiner EICKHOFF. Yes. In connection with the production of evidence I should like to call counsels' attention to the rules and regulations, Series One of the Board, Section 20. We needn't take it up at this time.

Mr. EDISES. Section 20 of which article were you referring to?

Mr. MERRICK. Board Rules and Regulations.

866 Trial Examiner EICKHOFF. Page seven.

By Mr. MERRICK:

Q. Mr. Phelps, can you identify that as the original application that you filed with the company for re-employment after the strike?

Mr. EDISES. May I see the exhibit?

Trial Examiner EICKHOFF. Please present any documents to counsel before showing to witness.

A. Yes; I can identify that.

By Mr. MERRICK:

Q. Is your original application?

A. Yes.

Trial Examiner EICKHOFF. It may be admitted as Respondent's Exhibit No. 7.

By Mr. MERRICK:

Q. Do you recognize this other paper you say you saw attached to your application for re-employment?

A. Yes.

Q. That is the document you referred to in your testimony?

A. Yes.

Mr. MERRICK. I offer that in evidence.

Trial Examiner EICKHOFF. Let us identify that a little further. What is that, Mr. Phelps?

The WITNESS. This is Mr. Rodman's letter of transmittal with my letter, or application for re-employment dated October 17, and subsequent endorsement from Mr. Ellery W. Stone, October 26, wherein

867 application proved there is no objection to favorable consideration when a vacancy occurs at San Francisco. It bears my——

Trial Examiner EICKHOFF. That is sufficient.

Mr. MERRICK. I offer this in evidence.

Trial Examiner EICKHOFF. Any objection?

Mr. EDISES. No.

Mr. MERRICK. On the procedure in the past, I think it has been to make it part of the same exhibit.

Trial Examiner EICKHOFF. Then, these two together will constitute Exhibit No. 7.

(The application and letter of transmittal as referred to was received in evidence and marked "Respondent's Exhibit No. 7, Witness Phelps.")

Mr. MERRICK. No further questions.

Mr. EDISES. May I request the production of the original of the letter of Mr. Dewey to Mr. Rodman, a copy of which was introduced in evidence this morning, subject to your later finding the original?

Mr. MERRICK. I haven't been able to procure the original. I think that I said "If I could locate it, I would." I haven't been able to see Mr. Rodman until he came into this room a few minutes ago.

Mr. EDISES. Well, may it be understood then this copy will be the best evidence until the original is unearthed by you?

868 Mr. MERRICK. The copy is in evidence unless the original is subsequently produced and substituted therefor.

Mr. EDISES. You are not going to offer any further objection?

Mr. MERRICK. I didn't offer any objection.

Redirect examination by Mr. EDISES:

Q. Mr. Phelps, going back to your conversation with Mr. Rodman on October 15 at his office, do you remember whether anything was said about the meeting at the Bellevue Hotel?

A. Well, I took the position there that I hadn't been notified. He said that wasn't his fault.

Mr. MERRICK. I object to these positions taken.

Trial Examiner EICKHOFF. Yes, you see you are characterizing what you said or did, rather than what you stated you did or said.

The WITNESS. I simply said I wasn't notified about the meeting. He said that wasn't his fault.

I said, "Nor is it mine."

He said, "That is just one of those things."

By Mr. EDISES:

Q. Did you say anything further how it happened you were not notified?

A. Well, he said it was possibly that I was sort of out of the group and removed from the center of the strike and everything. It is possible no one thought of me.

869 Q. He offered that as a reason why you were not notified of the meeting at the Bellevue Hotel?

A. Yes.

Examination by Trial Examiner EICKHOFF:

Q. How did that meeting happen to be discussed between you and Mr. Rodman?

A. Well, he asked me why I didn't come to work that morning, so I told him I did come to work. I did come to work this morning.

Mr. Dewey spoke up and said, "I believe it developed that he made several efforts to see me, and I wasn't in. As a matter of fact, you know where I was. I was with you."

So then his explanation of why I wasn't notified followed. Simply that no one apparently thought of me. I was off by myself, sort of isolated from the crowd.

Q. Was there bearing between the time you applied for work and this meeting?

A. Yes; very important bearing. In fact, the company first took the position—I'll say it this way—the first statement to me was the reason I didn't get a chance to go back to work was because I didn't show up in time. As a matter of fact, I did show up in time. Then Mr. Rodman said that he had his orders beyond which he couldn't go. He could simply forward my application and let it go at that.

He did tell me, however, he would favorably recommend
870 my application, but then after he learned that I had been to the Labor Board, and his letter shows he did not recommend it.

Q. No; but I am still thinking about how this meeting happened to be discussed. Did someone say, if you had been at the meeting earlier?

A. No one said that. I think I brought it up myself. I think I asked why I wasn't notified. If it was a company meeting, why I wasn't notified. I think that I was assuming that it was a company meeting, but nothing had been said. I knew nothing about it, about the circumstances surrounding the meeting at that time, because I had been in Mr. Dewey's office practically the entire day of the 8th, and I talked to no one in the operating room, and I didn't go into the union hall during that succeeding week.

I did go to the Labor Board on the 14th, and I wrote to Mr. Rodman on the 14th; I talked to Mr. Rodman on the 15th then, and the 16th was when I called Mr. Wagonet, told him what Mr. Dewey told me about the status of my application.

Trial Examiner EICKHOFF. Any further questions?

By Mr. EDISES:

Q. I show You a letter headed "San Francisco Stock Exchange, 155 Sansome street, San Francisco, office of the President," addressed to Mr. F. L. Dewey, Mackay Radio System, and so on—and
871 ask if you have ever seen the original of that.

A. Yes; I have seen the original of that. This is a photostatic copy.

Q. Under what circumstances did you see the original?

A. Mr. Dewey gave me a sheaf of letters.

He said, "These letters won't do you any good. The Old Man won't look at them."

I said, "Suppose he wants them later?"

He said, "Well, if he wants them he'll ask for them."

I said, "I'd like to make copies of them."

He said, "Go ahead."

I took them to a photostatic establishment and had several of them photostated. Several days after Mr. Dewey was very anxious to get hold of it, of the original, and so I had to go over and hurry them up on the photostating process.

Q. Did you return the originals to Mr. Dewey?

A. Yes; they were returned by messenger. We have the receipt for them.

Mr. EDISES. Do you have the original receipt for them?

Mr. MERRICK. I shall see.

By Mr. EDISES:

Q. Have you ever seen the original of that letter before? [Counsel Merrick hands witness letter.]

A. I never saw the original of this.

Q. Where did you obtain that?

A. Mr. Sorich, manager of the Clearing House, San Fran-
872 cisco Stock Exchange mailed this carbon copy to me at home.

Q. Do you know the circumstances under which that letter was written?

A. Yes, I met him on the street and he inquired about my status, and what was being done about it, and everything.

I told him all I could about it, and he asked me if I thought it would do any good for him to write a letter.

"Well," I said, "Mr. Shaughnessy has written. If you would care to write one it can't do any harm."

A few days later, I received this letter in the mail.

Q. Who is Mr. Shaughnessy, whose presentation appears on this letter?

A. President of the Stock Exchange.

Q. Who is Mr. Sorich, whose signature appears on this letter?

A. Manager of the clearing house of the Stock Exchange.

Mr. EDISES. Have you the originals of these letters, Mr. Merrick?

Mr. MERRICK. I think I have the originals. Whether I have them with me or not, I don't know.

(Counsel Merrick looks for letters in file.)

Mr. MERRICK. No, I haven't the originals.

Mr. EDISES. I wish to offer these two letters in evidence, then, subject to the production of the originals. Have you any objection to my doing this?

873 Mr. MERRICK. I object to the letters as being incompetent, irrelevant and immaterial.

Trial Examiner EICKHOFF. Well, I am sure I don't know what they are. I'd like to have the witness tell me what they are. Take them one at a time.

Mr. MERRICK. Does the Examiner think this is proper?

Trial Examiner EICKHOFF. I don't know what they are.

Mr. MERRICK. I suggest he read the contents of the letters before deciding whether or not they are admissible.

Trial Examiner EICKHOFF. We want some description of them.

Mr. EDISES. Mr. Merrick has brought up the question of purported requests from the Stock Exchange for the discharge of Mr. Phelps. I believe that these letters are material.

Mr. MERRICK. They don't bear on whether or not the incident to which I referred occurred.

Mr. EDISES. You have raised the allegation that the Stock Exchange requested his discharge.

Mr. MERRICK. That is correct.

Mr. EDISES. Now, I offer these two letters on the contrary to show that the Stock Exchange was extremely satisfied with Mr. Phelps, and even requested his re-employment.

Mr. MERRICK. In the first place, the letters to which I re-
874 ferred, are not in evidence. These couldn't tend to contradict them. In the second place, even if they were here, this correspondence at a later date would have no tendency to prove or disprove the attitude of the Secretary of the Stock Exchange at a different time.

Mr. EDISES. Well, I can't see——

Trial Examiner EICKHOFF. (Interrupting.) Well, I'll admit the one from Mr. Shaughnessy as tending to rebut the implication that this witness was in bad odor with the Stock Exchange on or about October 8, 1935.

I don't see that the other would be material.

Mr. MERRICK. However, I don't see that any evidence has been brought out on the attitude, October 8th.

Mr. EDISES. No, but there was an implication. And this letter, Mr. Examiner?

Trial Examiner EICKHOFF. I don't see for what purpose you would introduce that.

Mr. EDISES. Simply corroborative of the contents of those letters as to Mr. Phelps' standing.

Trial Examiner EICKHOFF. Is there any connection between——

Mr. EDISES. Decidedly. This is from the manager of the clearing house of the San Francisco Stock Exchange.

Trial Examiner EICKHOFF. Oh, all right. I see, then. I will admit these letters. Those will be numbered—The letter to Mr.
875 Dewey will be numbered No. 9, and the Clearing House Letter No. 10.

(The letter referred to, dated Oct. 8, 1935; and the letter referred to, dated Oct. 15, 1935, were received in evidence and marked "Board's Exhibits No. 9 and 10, respectively, Witness Phelps.")

By Mr. EDISES:

Q. I show you this letter and ask you if you have seen the original of that, and the circumstances under which the letter was written.

Trial Examiner EICKHOFF. Just a minute! Not so much at a time. I don't know whether he saw this thing before.

A. Yes, I have seen the original of this before.

By Mr. EDISES:

Q. Do you know how that letter came to be written?

Mr. MERRICK. I object to that question.

Trial Examiner EICKHOFF. Yes, what was the original of that? [Witness hands Trial Examiner Eickhoff document.]

Trial Examiner EICKHOFF. I want this to appear in the record.

The WITNESS. Oh, pardon me.

Mr. MERRICK. May I see the document?

The WITNESS. Pardon me.

Examination by Trial Examiner EICKHOFF:

Q. If that is a copy of something, what is that a copy of?

876 A. This is a copy of a letter that Mr. John J. Quinn, of the bond department of Dean Witter & Company, wrote to Mr. Rodman at my request.

Q. Dated when?

A. October 8, 1935.

Q. Do you know that that is a true copy of an original?

A. I do.

Trial Examiner EICKHOFF. Are you going to offer this?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. Any objection?

Mr. MERRICK. Yes; I object.

Trial Examiner EICKHOFF. Let me see it. What would be the purpose of this letter?

Mr. EDISES. Evidence was introduced that Dean Witter & Company had taken their business, or certain of their business, away from Mackay Radio as the result of the refusal of the Mackay Radio to re-employ Mr. Phelps.

Mr. MERRICK. That evidence hasn't been introduced.

Mr. EDISES. I believe there has been.

Mr. MERRICK. This witness could have been the only one who introduced it, and he hasn't.

Mr. EDISES. Mr. Phelps testified, I believe, that Dean Witter & Company stated to him that they had diverted some of their business from Mackay Radio, as a result of Mackay Radio's refusal to employ Mr. Phelps.

877 Mr. MERRICK. I doubt if that is a correct statement. You might ask the witness.

Trial Examiner EICKHOFF. Even if that were, what would this letter do?

Mr. EDISES. Mr. Merrick, on cross examination, directed a question at the witness which was intended to bring out, or to imply, that

Dean Witter & Company had increased its business, rather than take away any business since Mr. Phelps' refusal of employment. These letters are offered in evidence to indicate that, far from having proved the refusal of Mr. Phelps to be re-employed, Dean Witter & Company have taken the position all along that they actively favor Mr. Phelps' re-employment.

Trial Examiner EICKHOFF. That may all be true. Was there any evidence to the effect that they did not favor his re-employment?

Mr. EDISES. Well, there was the implication of Mr. Merrick, I believe, intended to produce——

Mr. MERRICK. (Interrupting.) I deny any such implication.

Mr. EDISES. What was your purpose in making a statement to the effect that Dean Witter & Company had increased its business since Mr. Phelps' refusal of re-employment?

Trial Examiner EICKHOFF. Was such a statement made?

Mr. EDISES. He did.

878 Mr. MERRICK. I asked him whether or not the business had increased since he left the office and he said, "No." He did not know.

Mr. EDISES. I believe your question was, "Isn't it a fact, Mr. Phelps, that Dean Witter & Company have substantially increased its business since you were refused re-employment?"

Trial Examiner EICKHOFF. Yes; but how do these letters bear on the statement, assuming there was such a statement?

Mr. EDISES. The implication was that Dean Witter & Company opposed the re-employment, or favored the discharge of Mr. Phelps. The indications are that they did not.

Trial Examiner EICKHOFF. I think that is pretty farfetched. Let me see the other letter. [Trial Examiner Eickhoff examines other letter.]

Trial Examiner EICKHOFF. Well, I will not admit these at this time. If you want them marked for identification, they may be so marked.

Mr. EDISES. May we have them marked for identification?

Trial Examiner EICKHOFF. Yes. As they are marked, have them identified.

Mr. EDISES. I want to submit for identification, letter headed, "Dean Witter & Company," then "October 8th, 1935," addressed to Mr. H. L. Rodman, signed Robert R. Platt, dealing with——

Mr. MERRICK. (Interrupting.) Did you say a letter, or

879 a photostatic copy?

Mr. EDISES. Photostatic copy of a letter, dealing with the re-employment of Mr. Phelps.

Trial Examiner EICKHOFF. That will be marked Board's No. 11.

(The photostatic copy of letter referred to, dated October 8, 1935, was marked "Board's Exhibit No. 11, for Identification, Witness Phelps.")

Mr. EDISES. I further offer, for the purpose of identification, letter headed "Dean Witter & Company," dated October 8, 1935, to Mr.

H. L. Rodman, signed J. J. Quinn, likewise a photostatic copy of a letter.

Trial Examiner EICKHOFF. That will be marked for identification Board's No. 12.

(The photostatic copy of letter referred to, dated October 8, 1935, was marked "Board's Exhibit No. 12 for Identification, Witness Phelps.")

By Mr. EDISES:

Q. Mr. Phelps, you stated that during your negotiations for a wage adjustment, June 1934, which Mr. Tuel was present at, a Mr. Mathieson was present, is that correct?

A. That is correct.

Q. What was he doing there?

A. He at that time was a representative of the union.

880 Q. These negotiations—what did the union have to do with these negotiations?

A. They had the same function in that case as they did in the prior negotiations, as they did with Mr. Palmer and others of those committees who negotiated for the H. B. men.

Q. You were presenting your case through the union, in other words?

A. Yes.

Mr. EDISES. That is all.

Recross examination by Mr. MERRICK:

Q. Mr. Phelps, you subsequently heard about the meeting that took place—about the meeting at the Bellevue Hotel, that meeting of October 7, or early morning October 8?

A. I don't recall just—Oh, I heard about it that same day, but I don't recall.

Q. What did you understand it to be? A meeting of what?

A. Well, the explanation I had was from Mr. Loudermilk. He really didn't go into detail, but he just said that a bunch had gotten together at the hotel.

I said "Why wasn't I notified?"

"For the same reason I wasn't," he said, "and several others."

He said some of the "weak sisters" he termed them, got together and in a panic they went back and stuck a knife in our backs.

881 Q. Did you understand that the meeting was confined to men who were employed at the H. B. office?

A. Not necessarily. I understood it to be a meeting that was confined simply to those who were notified.

Q. Do you know whether anyone was present at the meeting who was not notified at the H. B. office?

A. I don't know that, no.

Q. You don't know of anybody who was present at any of the other offices?

A. The only other office would be Lobitos, or Half Moon Bay. I don't know of anyone.

Q. Then you don't know of anyone who was not an employee of the H. B. office?

A. Except that it was testified that Mr. Rathborne was.

Q. He was the only one that you know of?

A. Well, understand now, I don't know of anyone who was there.

Trial Examiner EICKHOFF. Do you want this witness kept on call, or may we excuse him for the balance of the hearing?

Mr. EDISES. I believe we are through with him.

Mr. MERRICK. I don't know of any occasion for calling him to the stand.

Trial Examiner EICKHOFF. Well, you know where to reach him.

Mr. EDISES. That is all, thank you.

(Witness excused.)

882 ARTHUR NEIL CHAMBERS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination by Mr. EDISES:

Q. What is your name?

A. Arthur Neil Chambers.

Q. Were you working in the H. B. office of Mackay Radio—one moment, please—what is your address?

A. 179 Oak.

Q. San Francisco?

A. Right.

Q. Were you working for the H. B. office of Mackay Radio October 4, 1935?

A. I was.

Q. Did you go on strike at that time with the other members of the H. B. office?

A. I did.

Q. Were you present at about 1:30 or 2:00 a. m. Tuesday morning, October 8th, 1935, at the Bellevue Hotel, San Francisco?

A. I was.

Q. And was Mr. Charles Parker with you then?

A. He was.

Q. And Mr. Loudermilk?

A. Yes.

883 Q. Did you go down with Mr. Parker and Mr. Loudermilk to one of the rooms in the Bellevue Hotel at that time?

A. We did.

Q. Will you describe just what happened as you approached that room, and so on?

A. Well, to tell the whole story——

Q. Well, I would like you to limit it, if possible, specifically to the questions that I ask.

Trial Examiner EICKHOFF. You are now approaching the room. What did you see?

A. Well, the three of us went up in the elevator and got off the elevator. We intended to walk right into the room. That was my intention, the three of us got up there, I believe. The room was 320 or 321. There was two of them right together there, so we stopped outside the door and we all listened. First thing I heard was a supervisor by the name of McKercher say, "Well, I told those fellows six months ago we couldn't win this strike."

Then the next conversation I heard was from Mr. Jorgensen. He said, "If those fellows get tough, we can get just as tough."

We had a little conference out there. I wanted to go in, and some of the others didn't; and I listened there again. I thought that the meeting was breaking up in this room. So Loudermilk said to me, "Let's go now. This is no place for me."

884 "Well," I said, "I'd like to see what this is all about."

We walked to the elevator, rang the bell. We waited some time till the elevator came. By that time these men were in the room, and they walked out. At least, a part of them walked out.

By Mr. EDISES:

Q. Do you remember who came out of the room?

A. I do.

Q. Who were they?

A. Burts, Olson, Jorgensen, McKercher, and Chester Frear might have been one other, but I am not sure.

Q. Can you say what time that was?

A. Well, I would say that was about 2 o'clock, or five minutes after 2—not later than that.

Q. What happened then?

A. Somebody said, "Here they are." That was all the conversation that went on in the elevator.

Q. You went down the same elevator?

A. We were all in the same elevator. They came out of the hotel. We walked out to the front of the hotel, Mr. Olson and Jorgensen and Burtz walked down to the corner of Taylor street. McKercher and Chester Frear walked up towards Leavenworth, or Jones street, and three of us stood there on the curb.

Jorgensen walked down to the curb with Olson, and Burtz and I walked back: we were still standing there and he didn't speak to us and we didn't speak to him. I don't know whether he saw us or didn't see us.

885 Q. Were you an operator at the H. B. office at the time of the strike?

A. I was.

Q. Had you been invited to come to the meeting at the Bellevue?

A. Well, no.

Q. How did you know about it?

A. Well, I was down at the union hall, did picket duty between 2 a. m. and 4 a. m. A man by the name of Ludlam phoned up the union hall about one o'clock, or thereabouts.

He said that Poy phoned him up. He was all excited. He said they were having a meeting at the Bellevue Hotel, 320 or 321. They said they were having a meeting of the H. B. employees. He said, "I don't know what to do about it."

"Well," I said, "Rathborne and Loudermilk have just went home. I think there must be some mistake. Everybody else that is mixed in this union activity have gone home."

"Well," he said, "Poy phoned me up. They had phoned a couple of others over there—Clifford and somebody else."

"Well," I said, "I will phone up Rathborne and Loudermilk. They have just left here a few minutes ago."

Trial Examiner EICKHOFF. What does all this tend to prove?

Mr. EDISES. Mr. Loudermilk has been the sole person to tes-
886 tify to this particular episode. This is in part corroboration of Mr. Loudermilk's testimony.

Trial Examiner EICKHOFF. Well, I know about the telephone conversation.

Mr. EDISES. I asked him about the meeting. He is getting around to the answer.

The WITNESS. He told me about the meeting, 320, or 321, he didn't know which it was.

By Mr. EDISES:

Q. You didn't receive any invitation from Mr. Hatch or Mr. McLaughlin?

A. No.

Q. You are quite positive that, when you rode down in this elevator with Mr. Jorgensen and the others you have mentioned, that nobody mentioned a meeting to you, or asked you to come to it?

A. Nobody said a word. I think the only—somebody said, "Well, there they are!" but I wouldn't swear to that, either.

Q. Did you later go back to the Bellevue Hotel and attend the meeting?

A. I did. I was on picket duty at 2 o'clock. I got down there at this meeting 2:10 or 2:16, and with me, Parker was with me, and a man by the name of Adams. We stopped there and talked it over, and we all three decided that we would go back and see what was going on up there.

So the three of us—we got in a car and went up there. We walked up into the hotel——

887 Trial Examiner EICKHOFF. Just a minute! The important thing is, did you go there?

The WITNESS. Yes.

Trial Examiner EICKHOFF. Not how you went there, or anything of that sort.

By Mr. EDISES:

Q. Assuming now that you have arrived at the meeting at the Bellevue Hotel, tell us exactly what you saw and what took place.

A. The three of us walked into the room. It was a sitting room,

and a bedroom in this place. We walked into the sitting room and Mr. Jorgensen was in the room at the time. He said "Hello, boys! There they are now."

I don't know exactly what they said. He stepped back into the bedroom.

At that time there was ten or twelve people in the room. I don't know how many, but I asked Hatch "What is going on here?"

He said there was just the employees meeting.

So I said, "Well, what is going to be done?"

He said, "Just to get together to see whether the men want to go back."

I asked him, "Are there any restrictions?"

He said, "Yes."

I said, "Who?"

He said "I don't know."

888 In the meantime there was men coming in all the time. Some of us decided to go down and get some coffee. So——

Mr. EDISES. Just skip that.

Trial Examiner EICKHOFF. He left and then he returned.

The WITNESS. We went downstairs and got some coffee.

Trial Examiner EICKHOFF. Then you came back?

The WITNESS. I met some men and we all went back together.

By Mr. EDISES:

Q. Then what happened?

A. Well, I went back to Loudermilk and he went in the other room with Jorgensen.

By that time we had been on strike since Friday and I had only 14 hours' sleep since then. I went to sleep on the floor in the other room. I don't know how long I was in there, but there were so many of us in it, in there—Jorgensen and Loudermilk had the sitting room: we were all sitting or lying around the bedroom, so I went to sleep, maybe for half an hour.

Q. After you woke up, what did you see and hear?

A. I was lying behind the door. They were getting so crowded in there that they finally called the meeting to order, and we all went into the other room, or the part that could get in there.

Q. By "the other room," you mean the sitting room?

A. Right.

Q. You weren't asleep at the time the meeting was called to
889 order?

A. No, I was awake. [Laughter.]

We went into the other room and they—everybody signed a roster there, just with your name on it. In fact, when the meeting was called to order, there was 36 there all together.

Q. Everybody put their name down on the list?

A. Everybody signed their name on a list.

Q. Did you too?

A. Right. So Hatch got up and said "We'll have to nominate somebody to be a chairman of this meeting—group here."

So I don't know who nominated McLaughlin, but McLaughlin was nominated.

Q. What did he say?

A. Well, he said, "This is the first time I was ever chairman of a group."

Mr. EDISES. "Unaccustomed as I am to public speaking?"

The WITNESS. Yes.

Trial Examiner EDISES. Is this all?

Mr. EDISES. This will be chiefly corroborative. I want to clear up one point in particular.

Trial Examiner EICKHOFF. Can you add a stipulation as to it being corroborative?

Mr. EDISES. Let's ask the witness if he heard the previous testimony, Mr. Examiner.

Trial Examiner EICKHOFF. I wouldn't do that unless Mr.
890 Merrick is agreeable to the stipulation.

Mr. MERRICK. If you ask me to stipulate that his testimony corroborates that of Mr. Loudermilk in certain respects, we might agree then.

Mr. EDISES. Mr. Loudermilk and also Palmer——

Mr. MERRICK. (Interrupting.) Just name the items of the testimony you seek to corroborate through this witness.

Mr. EDISES. I think I would prefer to ask him one or two questions through the witness.

Trial Examiner EICKHOFF. All right.

By Mr. EDISES:

Q. Did Mr. Jorgensen say anything at this meeting?

A. After the meeting had been called to order and there was some argument there, Mr. Jorgensen was called to read off the list, who was on this list to be left out.

Q. Who first mentioned the list?

A. That I couldn't say. I believe it was Salisbury; I wouldn't swear to it.

Q. Go ahead.

A. That was all that Jorgensen said.

Q. You don't mean Salisbury, do you?

A. No; I mean on the list. Do you want me to name off the list?

Q. Who first suggested the list?

A. Well, either Hatch or McLaughlin.

891 Q. All right, then what did Jorgensen do?

A. Jorgensen was in the other room—that is, the bedroom—he stepped into the room. He had a list in his hands; he read off the list.

Q. Do you remember the names on the list?

A. Well——

Mr. EDISES. Will you stipulate the names on the list are the same as Palmer——

Mr. MERRICK. (Interrupting.) I think so. There is no dispute about who is on this list.

By Mr. EDISES:

Q. What did he say after he read the list?

A. He said, "Any man to be re-employed will have to submit his application to Mr. Stone"—or words to that effect.

Q. Did he say anything else?

Trial Examiner EICKHOFF. Was your name on the list?

The WITNESS. No, sir.

By Mr. EDISES:

Q. Did Mr. Jorgensen say whether or not he had made out the list?

A. It seems to me he said he didn't make out the list.

Q. That is your best recollection?

A. Yes.

Q. Where was Mr. Jorgensen after he finished reading the list, and before?

A. Well, before and afterwards there was not room enough for everybody in the sitting room. He was kind of back in
892 the bedroom. There was a door from one room to the other. There was three or four standing in the room. He stood kind of back. They were all standing back—they were all standing in the door. I could see him where I sat; he was in the bedroom. While he read off the list he stepped into the room, I believe.

Trial Examiner EICKHOFF. Does it make any difference where they were?

Mr. EDISES. I think the question where Mr. Jorgensen was during this meeting might have a bearing.

By Mr. EDISES:

Q. Did you go back to work with the others?

A. Well, I didn't go back with the others. I went home first. I was there just about the time the others were there; yes.

Q. What time was that?

A. Around six in the morning.

Q. Did you at that time re-apply for work?

A. Well, I believe, but I am not certain; the next day I signed a slip for re-employment.

Q. Was anything said about re-applying for work that morning, Tuesday morning, after you got back to the office?

A. Well, the way it seems to me that they made out the list there, and the next, it seems like I worked from six that morning to three that afternoon. It seems the next morning I signed that slip.
893 We were assigned to shifts that day, but I don't know exactly—I don't think I signed anything that day. I believe it was the next day.

Q. Was Mr. McLaughlin present Tuesday morning when you got back to work?

A. He was.

Q. Did you have any conversation with Mr. McLaughlin that morning about anything?

Trial Examiner EICKHOFF. Not "about anything." Let's——

By Mr. EDISES:

Q. All right, then—about any condition of your employment?

A. No.

Q. Did you go home during that morning, or did you try to go home, or did you ask for permission to go home that morning?

A. Well, after I worked until two o'clock, I wanted to go home. At three I was pretty tired. At three o'clock he said I could go home.

Q. Who did?

A. He held me to three—I believe it was Mr. Layman.

Q. Well, was he your superior?

A. He was the head supervisor.

Q. Did you see the—did you see the police or any policeman at the Bellevue?

A. I had seen them out in front. They walked up in the room and said—that was about four o'clock—they said, "Where are those we are supposed to take down?"

894 Somebody said "In the room." I don't recall who it was. Hatch said "We won't need you."

So they conferred with Mr. Jorgensen, I believe, and left the room.

Q. You say the police conferred with Mr. Jorgensen?

A. They conferred with somebody else, that was all I heard.

Q. You say that you signed an application for work the next day? Were you requested to sign anything other than that?

A. Well, there was a round robin sent around.

Q. What kind of a round robin are you referring to?

A. Well, this is a—an application or——

Mr. MERRICK. (Interrupting.) This is testimony as to the contents of a written document. I suggest that the written document be produced.

Mr. EDISES. We'll be very happy to produce it if you know where it is.

Mr. MERRICK. I hope I have it. [Counsel Merrick hands document to Counsel Edises.]

By Mr. EDISES:

Q. Is this the round robin that you have reference to?

A. Yes.

Q. Is your signature on there?

A. Yes.

Q. Under what circumstances did you first see this document?

Mr. MERRICK. Is this offered in evidence?

895 Mr. EDISES. I offer——

Trial Examiner EICKHOFF. (Interrupting.) I will reserve decision on whether it may be admitted until I see it.

Mr. EDISES. I beg your pardon, Mr. Examiner.

By Mr. EDISES:

Q. When did you first see this document?

A. Mr. Spanover brought it around to me first.

Q. Who is Mr. Spanover?

A. An operator, H. B. office.

Q. Yes; go ahead.

A. Well, he brought it around in the afternoon—the first afternoon—and I read it and didn't sign it.

Q. Why didn't you sign it? Did you give any reason at that time?

A. Did I give any reason?

Q. For not signing it at that time?

A. No, I didn't.

Q. What was you reason?

Mr. MERRICK. I object.

Trial Examiner EICKHOFF. Sustained. I think I will reverse my decision. I would like to know why he didn't sign it.

By Mr. EDISES:

Q. Why didn't you sign that document when it was first presented to you?

A. When I first went back to work, I realized there was going to be some kind of a yellow-dog letter, and that was it.

896 Mr. MERRICK. I object to this testimony, what he realized.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Tell us the facts. Go ahead. Tell us your reason.

A. The reason I didn't sign it was because it looked like to me somebody was taken undue advantage of—somebody was taking undue advantage of somebody else. So, I didn't sign it at that day. The next day I thought a good deal about it, and talked to a good many men who had signed it, and the reason why they had and hadn't. By the time I signed that, there was 50 names on there, and I thought 51 wouldn't hurt.

As far as I am concerned, I don't hold a license. I couldn't go to sea. To save myself a lot of trouble I thought I would sign it.

Examination by Trial Examiner EICKHOFF:

Q. You mean, your first refusal to sign it was due to the fact that that might be disloyalty to ARTA?

The WITNESS. That's right.

Q. Then, later on, you thought it didn't make any difference, so you signed it?

A. At that time what I thought was this: The way the strike turned out it looked to me that the ARTA was definitely

897 broken. It looked to me that way. The only reason I could see was the reason why some people didn't sign it was because they had a license and I didn't.

Trial Examiner EICKHOFF. That may be admitted as Board's Exhibit No. 13.

(The document referred to was received in evidence and marked as "Board's Exhibit No. 13, Witness Chambers.")

By Mr. EDISES:

Q. Did you see Mr. Spanover circulating this document?

A. I did.

Q. When was it circulated? What time of the day?

A. Well, he had it on him at all times, as I recall. He circulated it—I can't seem to place the time of day that he gave it to me. It seemed to be in the afternoon. In fact I am positive it was in the afternoon.

Q. For how many days was it circulated?

A. Well, I seen it one afternoon.

Examination by Trial Examiner EICKHOFF:

Q. Where was that?

A. In the Mackay operating room.

Q. H. B. room?

A. H. B. operating room—and the next afternoon I signed it, and that night, why—I mean the next morning I knew it was still in existence because Spanover wanted to know where it was.

898 It seemed that McLaughlin had it. He left the service and went out and got it.

By Mr. EDISES:

Q. Who is he?

A. Who is who?

Q. Whom do you mean by "he"?

A. Spanover.

Q. Spanover left and went out and got it?

A. That is the information he gave me.

Q. Wasn't Spanover on duty at that time?

A. I believe he was.

Examination by Trial Examiner EICKHOFF:

Q. You mean to say you saw this circulated in the H. B. operating room by one or more people?

A. I didn't see it circulated by only one person, but I understood he gave it to McLaughlin.

Q. Well, unless you know—What you understand is not good evidence here. Did you see any circulated in the H. B. room?

A. I saw John Spanover; yes.

Q. What day?

A. I wouldn't know the date.

Q. You were already back at work?

A. Yes.

Q. Do you know whether or not he was on duty at the time?

A. Yes.

Q. Was he?

A. Yes.

899 By Mr. EDISES:

Q. Pardon me, Mr. Examiner—Do you know whether any company official was present in the operating room at any time while Spanover was circulating this?

A. Well——

Trial Examiner EICKHOFF. Just think this over carefully. If you don't know, just say "No, I don't."

A. Well, I can't say it that way. It is a large room up there. This thing was circulated for two days that I knew of, and I don't remember of any company official being right with him when he presented it, but I do know for a fact that Jorgensen was at his desk in the corner at some time when he was present—I mean, presenting.

Q. Where is Mr. Jorgensen's desk with reference to the operating room?

A. Well, he is over in one corner on a wide platform about a foot——

Q. (Interrupting.) Does that position command a view of the operating room?

A. It does.

Q. Did you see Mr. Spanover apply to Mr. Jorgensen, or anyone else, for permission to leave the operating room the day he went after the petition—went out to get the petition?

A. No; I don't know for sure that he went out and got it—only what he told me.

Q. He told you he did?

900 A. Yes.

Mr. MERRICK. I feel I have to object to any other hearsay along this line.

Trial Examiner EICKHOFF. Yes; withdraw that last question.

By Mr. EDISES:

Q. Do you know who prepared this document?

A. No, I don't; but——

Mr. MERRICK. The question is answered.

Trial Examiner EICKHOFF. If you don't know, wait until the next question, unless you have some explanation of your answer.

The WITNESS. Well, the only thing that I can draw conclusions of, Mr. Spanover——

Mr. MERRICK. (Interrupting.) I object to this testimony.

Mr. EDISES. I suggest he be permitted to tell what Mr. Spanover told him, especially in view of the somewhat ambiguous question.

Trial Examiner EICKHOFF. Well, if you ask the question, "Did anybody tell you?" I might allow it.

By Mr. EDISES:

Q. Did Mr. Spanover ever tell you where he got this document?

A. No, he didn't.

Examination by Trial Examiner EICKHOFF:

Q. Did anybody ever tell you who prepared it?

901 A. The only thing that was ever told to me about this document was that John Spanover said that he wanted to see a lot of smart guys, who were so big in the union—didn't say it like that, but words to that effect—that he wanted to see a lot of these smart guys sign this document.

Q. He didn't say he prepared it?

A. No.

By Mr. EDISES:

Q. Was Mr. Spanover a member of the ARTA?

A. He wasn't before the strike, but I understand that he did join during the strike.

Trial Examiner EICKHOFF. Do you want to go on with this, Mr. Edises?

Mr. EDISES. I think I can finish my direct in a moment or two.

By Mr. EDISES:

Q. Did you ever see Mr. McDonough present in the H. B. operating room after you got back to work?

A. I seen him walk into the room.

Q. What did you see him doing?

A. He walked in the room, conferred with several people—some people, Mr. Jorgensen—about some of the other men, but he never referred to me.

Trial Examiner EICKHOFF. We will adjourn until ten o'clock in the morning.

(Thereupon, at 4:00 o'clock p. m., the hearing in the above-entitled cause was adjourned until 10:00 o'clock a. m., Tuesday, December 10, 1935.)

902 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Tuesday, December 10, 1935.

Met pursuant to adjournment at 10:10 o'clock a. m.

PROCEEDINGS

Trial Examiner EICKHOFF. Are you ready, gentlemen?

Mr. EDISES. Yes. Will you take the stand, Mr. Chambers?

ARTHUR NEIL CHAMBERS, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Direct examination by Mr. EDISES:

903 Q. When you returned to work on the morning of October 6th, October 8th at about 6 a. m., did you make any verbal application for work?

A. Not that morning, no.

Q. Did you see or hear any one else making any verbal application for work?

A. No.

Q. Do you know what became of the petition—I am referring now to the petition that was shown you yesterday, that was circulated by Mr. Spanover, as you said, after the men had signed it?

A. No, I don't know what became of it.

Trial Examiner EICKHOFF. Are you working now?

The WITNESS. No, sir.

Trial Examiner EICKHOFF. You are not?

The WITNESS. No.

Trial Examiner EICKHOFF. Were you reemployed by the Mackay Company?

A. I was.

By Mr. EDISES:

Q. Is the fact that you are not working now for Mackay Radio at all connected with the strike, or your union activities?

A. No.

Mr. EDISES. That is all.

Mr. MERRICK. No questions.

Trial Examiner EICKHOFF. No questions?

904 Mr. MERRICK. No.

Mr. EDISES. One further question. I beg your pardon. May I have that list, Mr. Reporter?

(Counsel Edises was handed the exhibit file from which he took an exhibit.)

By Mr. EDISES:

Q. I will ask you to identify the signature at the top of this list?

Trial Examiner EICKHOFF. Let the record show what you are presenting to the witness.

By Mr. EDISES:

Q. Presenting to the witness Board's Exhibit No. 13. The signature at the top of the first column there.

A. (Examining signature.) That is the signature on my library card, but I don't think I have that signature any more; but I believe that it is the signature.

Q. Whose signature?

A. Mr. McLaughlin's.

Q. Have you any reason to believe that is not Mr. McLaughlin's signature?

A. No.

Q. Whose is the second signature on the list?

Trial Examiner EICKHOFF. Just a minute: Do you testify that is Mr. McLaughlin's signature?

The WITNESS. I am not testifying that it isn't, but I am not
905 positive that it is. I believe I have his signature on my library card.

Trial Examiner EICKHOFF. You don't know whether or not it is?
The WITNESS. No; I am not positive.

By Mr. EDISES:

Q. Can you identify the signature at the top of the second column?
A. No sir.

Mr. MERRICK. I do not see its relevancy. We do not challenge the genuineness of any of the signatures. I don't see any purpose in the examination.

By Mr. EDISES:

Q. Mr. McLaughlin is a supervisor, is he not?
A. Right.
Q. The name which appears under McLaughlin is J. M. McKercher. Is he a supervisor?
A. Right.
Q. The first signature at the top of the second column is R. J. Hatch. Is he a supervisor?
A. He is the office electrician.
Mr. EDISES. That is all.
Trial Examiner EICKHOFF. Do you know in what order those signatures were put on that list?
The WITNESS. No sir, I do not.
Mr. EDISES. I believe the list speaks for itself in that connection.

906 No further questions.

Trial Examiner EICKHOFF. I think the list would be silent in that connection.
Mr. MERRICK. No questions.
Trial Examiner EICKHOFF. This witness may be excused then?
Mr. EDISES. That is all.
(Witness excused.)
Mr. EDISES. Mr. Hatch, take the stand, please.

ROBERT IRVIN HATCH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination by Mr. EDISES:

Q. What is your name?
A. Robert Irvin Hatch.
Q. What is your address?
A. 490 15th Avenue, San Francisco.
Q. Are you employed by Mackay Radio?
A. Yes.
Q. When did you go to work for Mackay Radio?
A. In 1931.
Q. What is your position?
A. Operating electrician.
Q. What hours do your work?
A. My hours are not regularly assigned.

907 Q. Well, are you on call at any time, day or night?
A. Yes.

Q. Ordinarily, however, what hours do you work?
A. Ordinarily work from 9 to 5.
Q. And only exceptionally at other times?
A. Right.
Q. Were you ever a member of ARTA?
A. Yes.
Q. What is your opinion of ARTA?
A. I think ARTA——
Mr. MERRICK. I object to that.
Mr. EDISES. Mr. Examiner, I believe we are entitled to ask that question in order to determine whether or not this witness is an adverse witness.
Trial Examiner EICKHOFF. Are you going to contend that he is?
Mr. EDISES. Yes; Your Honor.
Trial Examiner EICKHOFF. If that is part of the laying of the foundation, I will allow the question.
Mr. MERRICK. May I inquire whether what I understand to be the California rule as to adverse witnesses is to be considered a rule based on common sense, and, therefore, applicable in this proceeding?
Trial Examiner EICKHOFF. I had nothing to do with the
908 drafting of the California rule. I could not answer the question.
Mr. MERRICK. You said that only rules of common sense were applicable, and I am asking whether you consider that to be such a rule.
Trial Examiner EICKHOFF. The California rule?
Mr. MERRICK. Well, I understand that there is a rule, a statutory rule on that subject in this jurisdiction.
Trial Examiner EICKHOFF. I think it is 2055 in the Code of Civil Procedure.
Mr. MERRICK. Do you consider that to be applicable here?
Trial Examiner EICKHOFF. I am not answering you on that, Mr. Merrick.
Mr. MERRICK. You are permitting this examination, as I understand it, or considering it on the basis of examining him as a hostile witness. I am asking——
Trial Examiner EICKHOFF. If it is shown that the witness is hostile, I may permit him to be cross examined under such a rule.
Mr. MERRICK. That is all I had in mind.

By Mr. EDISES:

Q. What is your opinion of the ARTA, Mr. Hatch?
A. Will you enlarge on that question a little, please?
Q. Well——
Trial Examiner EICKHOFF. Can you answer it?
909 The WITNESS. Well, I have no definite opinions about ARTA excepting that I think the general idea of the union is good.

By Mr. EDISES:

Q. Well, do you now belong to ARTA?

A. No; I resigned.

Q. Why did you resign?

A. On account of the conduct of the Mackay Radio strike.

Q. You believe that that strike was conducted contrary to the best interests of the membership of the union?

A. I am positive it was.

Q. And who, in your opinion, were the leaders of ARTA during the strike?

A. Mr. Salisbury and Mr. Bash.

Q. Mr. Rone?

A. I don't know about Mr. Rone's position, what his position was.

Q. Was Mr. Palmer active in the leadership during the strike?

Mr. MERRICK. I object to the questions in regard to individuals. They haven't shown previously whether he is a hostile witness—hostile against the ARTA, not hostile against members of the union.

Mr. EDISES. I think you are being technical now, Mr. Merrick.

Trial Examiner EICKHOFF. I think he may ask the witness
910 whom he considered were leaders of the strike, but not in connection with showing any hostility.

Mr. MERRICK. He is asking that.

Trial Examiner EICKHOFF. Yes. You named two men.

The WITNESS. Yes, sir.

Trial Examiner EICKHOFF. And you have no opinion other than that?

The WITNESS. No.

By Mr. EDISES:

Q. Do you consider Mr. Palmer one of the leaders?

Mr. MERRICK. I submit that has been answered.

A. No; I do not.

By Mr. EDISES:

Q. Do you consider Mr. Loudermilk one of the leaders?

A. No; I hadn't.

Q. In other words, it is your opinion that Mr. Salisbury and Mr. Bash were the leaders of ARTA during the strike?

A. They were leaders of the Mackay Radio point to point division; yes.

Q. And that they acted contrary to the best interests of the membership?

A. Correct.

Q. In what respects did they act contrary to the best interests of the membership?

A. The membership was not given a chance to vote on the
911 strike. There was no referendum vote taken, contrary to promises made.

Q. Who was responsible for that, do you know?

A. I don't know.

Q. Do you mean to say that the membership never voted in favor of a strike against Mackay Radio?

A. They did not.

Q. At no time?

A. At no time did they vote on the strike itself.

Q. Well, you haven't answered my question, Mr. Hatch. I asked you, did the membership at any time vote in favor of a strike at Mackay Radio.

A. Yes.

Q. When?

A. In July.

Q. Did they at any subsequent time express themselves as favoring strike action against Mackay?

A. Not to my personal knowledge, no.

Q. It is possible that they might have then, is that not correct?

A. Correct.

Q. Did you ever vote in favor of strike action against Mackay?

A. In the July meeting, yes.

Q. And at no subsequent time?

912 A. No.

Q. Were you ever present at a meeting in which the question of strike action was brought up?

A. None, excepting this meeting in July.

Q. Were you ever present when a strike committee was voting on——

Mr. MERRICK. (Interrupting.) I submit this is cross examination already, before there is any necessity for it.

Trial Examiner EICKHOFF. No, I don't think that is cross examination, Mr. Merrick, asking him whether he was present at the meeting when such and such action took place.

Mr. MERRICK. He has the minutes of all the meetings.

Trial Examiner EICKHOFF. But he doesn't know whether this witness was present.

Mr. MERRICK. He can look at the roll on there. He said these minutes were read at the next meeting and approved. If there are no amendments and corrections, they were approved. Now, to ask this witness whether or not he was present, it seems to me is merely a question or a case of testing his memory or credibility or something. It isn't seeking information.

Mr. EDISES. Suppose I were testing his memory, Mr. Merrick?

Mr. MERRICK. I don't think this is the proper time for testing the memory of a witness that you have called on direct.

913 Mr. EDISES. It seems that I have only asked him direct questions so far.

Mr. MERRICK. I am not going to argue about it.

Mr. EDISES. May I at this time, Mr. Examiner, request that on the basis of Mr. Hatch's answers as to his attitude toward the leaders of the Mackay strike, namely, Mr. Salisbury and Mr. Bash, Mr. Bash being one of the complainants in this action, that I be per-

mitted to cross examine Mr. Hatch? I submit that it has been shown, as a result of those answers, that he is hostile.

Trial Examiner EICKHOFF. Not yet. If you seem to be having any difficulty in eliciting testimony, I may permit cross examination.

Mr. EDISES. All right.

Trial Examiner EICKHOFF. I do not think any hostility appears yet.

By Mr. EDISES:

Q. Were you present at any meeting in which the question of joint action with the marine division was discussed?

A. Yes.

Q. What was your attitude toward the joint action?

A. I was—I have forgotten whether a vote was taken on that subject or not, but I favored joint action.

Q. You favored joint action?

A. Yes.

914 Q. Did you favor joint action at all times?

A. No, I did not at first. When the matter was first discussed I didn't favor joint action.

Q. How long have you known Mr. Jorgensen?

A. I have known Mr. Jorgensen since 1933, when I first came into this division.

Q. Did you ever know him before that?

A. No.

Q. What grade of pay did you receive when you first went to work for Mackay?

A. My first pay was $165 a month.

Q. Did you receive any increases?

A. Yes.

Q. When?

A. I received $175.

Q. When did you receive that increase?

A. In 1932.

Q. Have you received any further increases?

A. No.

Q. Will you describe your position at Mackay Radio, your job?

A. I am responsible for the maintenance of all of the equipment in the office; and also I study the operation of the various channels and frequencies used in communications to various points, with

915 a view to using the most effective channels at all times.

Q. Do you have any men working under you?

A. I have two men who, to a certain extent, work under me. My rating is class "A." There is another man who is rated class "B" in my same line, and he has a helper.

Q. Do you direct their activities and oversee it?

A. Yes.

Q. What are the names of those men?

A. Norman C. Hoxie and Roy Henning.

Q. When did you join the ARTA?

A. In May 1935.

Q. And you say that you have been working for ARTA since when?

A. Working for Mackay you mean.

Q. Yes; Mackay.

A. Since 1931.

Q. How did it happen that you didn't join the union when it first started organizing?

Mr. MERRICK. Does the Examiner think this is relevant?

Trial Examiner EICKHOFF. No.

Mr. MERRICK. I object.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Under what circumstances did you join ARTA in May 1935?

A. I was invited to join.

916 Q. Had you ever been invited to join previously?

A. No.

Q. How do you explain that?

Mr. MERRICK. I object to that as irrelevant.

Trial Examiner EICKHOFF. Objection sustained.

By Mr. EDISES:

Q. Were you active in ARTA?

A. No.

Q. You didn't hold any offices?

A. No.

Q. You were not a member of any committees?

A. No.

Examination by Trial Examiner EICKHOFF:

Q. At this time do you feel that you are in one camp or in the other?

A. No; I do not. I feel strictly neutral.

Q. During the strike did you confer with the company regarding breaking it up?

A. I did not.

Q. Or no one connected with the company at that time?

A. No, sir. I did not. I had no contact with any individual in the company during the strike.

Q. Did you do anything to break up the strike by reason of any contact with the company or orders from the company?

A. No; I did not.

By Mr. EDISES:

917 Q. Mr. Hatch, you state that you are neutral. How does it happen that you resigned from ARTA?

A. Because I was afraid that the same leadership would cause a similar situation, and I didn't want to be involved in it.

Q. Why didn't you stay in the organization to try to reform it from within?

A. I am not a reformer.

Q. Did you attend meetings of ARTA regularly?

A. No; I did not.

Q. How long have you been an operator?

A. Since 1908.

Q. Have you been a member of any other organization in the communications field?

A. Yes.

Q. What?

A. I joined the United—I am not sure of the name—United Wireless Telegraphers Association, I think it was called, in 1912.

Q. How long did you belong to that?

A. I belonged to it until it broke up in 1913.

Q. Any other organizations?

A. No; that is all.

Q. Have you ever previously taken part in a strike in the communications industry?

A. No.

918 Q. Were you active in the Mackay strike, this last Mackay strike?

A. Not particularly. I served one tour of picket duty one day.

Q. Were you on any strike committee?

A. No.

Q. Have you ever done any work or held any other position at Mackay besides that of electrician?

A. Yes, sir; I was employed at the transmitting station at Palo Alto for a few months in 1933.

Q. Had you ever done any special kind of work other than that?

A. No.

Q. Ever done any personnel work for the company?

A. No.

Q. Have you ever made any reports to any company official or to the company in connection with any personnel matters?

A. No.

Q. At no time?

A. At no time.

Q. Nor verbal reports?

Mr. MERRICK. I submit this is not proper cross examination. He got an answer to his question.

Trial Examiner EICKHOFF. He answered the question.

By Mr. EDISES:

919 Q. Did you ever submit any report to the company on union activities?

A. No.

Trial Examiner EICKHOFF. Did you ever confer with any company employee or official during or immediately prior to the strike regarding the strike?

The WITNESS. No.

Trial Examiner EICKHOFF. What do you know about this Bellevue Hotel meeting?

Mr. EDISES. Mr. Examiner, I feel that I would like to—I intend to get to that, but I do have some questions which I feel are pertinent and ought to be asked prior to that.

Trial Examiner EICKHOFF. Get to them then and I will withdraw that question.

By Mr. EDISES:

Q. You went out on strike when the others did, did you not?

A. Oh, yes.

Q. Were you a strike captain?

A. No—pardon me, I was a picket captain.

Q. What did you do as a picket captain?

A. I was supposed to be in charge of the picket line during my watch.

Q. During the time that you were out on strike did you ever propose any direct action of any kind?

A. No.

Q. Isn't it a fact, Mr. Hatch——

920 Mr. MERRICK. (Interrupting.) I object to that form of the question.

By Mr. EDISES:

Q. Did you suggest to Mr. Rone——

Mr. MERRICK. (Interrupting.) I object to that.

Trial Examiner EICKHOFF. Wait until we hear the question.

Mr. MERRICK. He is asking a specific question.

Trial Examiner EICKHOFF. I may allow it, in the interest of moving along.

By Mr. EDISES:

Q. Did you suggest to Mr. Rone at any time during the strike that he could take your car and go down the Peninsula and throw a wet rag over the transmitters?

A. No.

Q. Did you have any conversation in regard to that matter?

A. I don't remember any particular conversation with Mr. Rone. If I did say anything of the sort, it was jokingly said.

Q. And to whom did you say it?

A. I don't remember.

Trial Examiner EICKHOFF. Just a minute! You said emphatically you had no such conversation. Then you said if you did have any such conversation it was jokingly.

The WITNESS. I will have to enlarge on my statement. I did make a statement to several individuals in the union that as long as

921 the transmitters remained on the air, our cause was practically lost. I might have jokingly said to several, including Mr. Rone, that a good thing to do would be to blow up the station, or to do something of that sort, but I had never proposed any such a thing seriously.

By Mr. EDISES:

Q. Did you also jokingly suggest that they could use your car to go down there?

A. No, I certainly did not suggest the use of my car for any such purpose.

Q. What do you mean by "jokingly"? How would you describe that?

A. Well, the same way that a man is dissatisfied with the food on shipboard and threatens to scuttle the boat, or hang the captain to the yardarm; nothing serious about a suggestion.

Q. About how many times did you say you made that suggestion?

A. I have no idea.

Q. Approximately. Three times?

A. No.

Q. Four times?

A. Possibly once or twice; a joke like that wears itself out after the first couple of times.

Q. What day did you first make that suggestion?

A. I don't remember. In fact, I don't remember making any such suggestion to any individual at any particular time.

922 I am merely stating a generality.

Q. When you made the suggestion did you laugh?

A. Probably did.

Q. You are not sure that you did?

A. No. In fact, I have no definite remembrance of any such occasion.

Q. In other words, you might have made it with a straight face?

A. Possibly.

Mr. MERRICK. I submit that is not cross examination, the way it is being handled by Mr. Edises. I don't think it is proper at all.

Trial Examiner EICKHOFF. Well——

By Mr. EDISES:

Q. In other words, you don't remember whether you made that suggestion with a straight face or not?

A. No, I do not.

Q. Who was present, to the best of your recollection, Mr. Hatch, when you made that suggestion?

A. I have no recollection at all of the matter.

Q. Might have been Mr. Rone?

A. Might have been Mr. Rone, yes.

Q. Were you in favor of the strike against Mackay?

A. No.

Q. Nevertheless you testified that you went out on strike

923 with the others, isn't that correct?

A. That is right.

Q. Well, if you oppose the strike, why didn't you remain at work?

Mr. MERRICK. Mr. Examiner, are you going to allow this cross-examination?

Trial Examiner EICKHOFF. Not much more, unless he shows some reason for cross-examining the witness. Maybe you are putting the cart before the horse here. Perhaps you can tie him in to the company. If you can, you had better do it before you start cross-examining him.

By Mr. EDISES:

Q. You testified that you went out on strike with the others?

A. Yes.

Q. And acted on the picket line. And did you do everything that you could to further the strike?

A. I didn't do everything I could, no.

Q. Well, you were on the picket line and acted as a picket captain?

Trial Examiner EICKHOFF. That is a pretty general question.

By Mr. EDISES:

Q. You testified that you were opposed to the strike?

A. Correct.

Q. Nevertheless, you acted as a picket captain and even
924 proposed methods for winning the strike, is that not true?

Mr. MERRICK. That is just plain cross-examination.

Trial Examiner EICKHOFF. It is, and I do not want much more of it unless you have shown that this witness is or was in such relationship that you should now be allowed to cross-examine him.

By Mr. EDISES:

Q. When did you first learn that a strike had been called?

A. At about a quarter after 3, Saturday morning, October 5th, when Mr. Jorgensen telephoned me from the office.

Q. Mr. Jorgensen telephoned you from the office?

A. Yes.

Q. Where were you at that time?

A. I was at home asleep.

Q. And did Mr.—what was said in that telephone conversation?

A. Mr. Jorgensen said that all the boys had gone out on strike and, "Will you come down to work?"

And if I recollect correctly, I replied "You know how it is, George. I am a member of the union and I couldn't come down and act as a strike breaker. However, if it is necessary for help to be there in order to protect the company's property, under those conditions I will come down."

Q. Do you know of any special reason why Mr. Jorgensen should have phoned you at that early morning hour?

925 A. Yes.

Q. Why?

A. Apparently all the men had walked out of the office and he wanted somebody down there to help carry on operations.

Q. Well, had you ever said anything to Mr. Jorgensen which would lead him to believe he might be able to persuade you to return to work while the others were out on strike?

A. No; quite the contrary.

Q. Now, what else was said in that phone conversation? Describe exactly, as close as you can, what was said by Mr. Jorgensen when he phoned you at 3:15 a. m., Saturday morning.

A. The only other think that was said was that Mr. Jorgensen requested me to call him in the morning.

Q. Did Mr. Jorgensen say just what he wanted you for?

A. No.

Q. He just said, in other words, he wanted——

Mr. MERRICK. (Interrupting.) I object to cross examination.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Had you ever talked over a possible strike with Mr. Jorgensen prior to the walk-out?

Mr. MERRICK. I object to that question.

Trial Examiner EICKHOFF. I will allow this question.

A. Why yes, about two months prior to the strike.

By Mr. EDISES:

926 Q. And what was said and done at that conversation?

I don't recall exactly what was said, but it was mentioned casually while we were having breakfast together in a restaurant across the street. I made the statement that he had nothing to worry about a strike; that it was understood that a referendum vote was to be taken among all the members and that I was positive that no strike would be voted.

Q. What did he say to that?

A. I don't recall.

Q. What else was said at that conversation?

A. Nothing further in connection with the strike.

Q. Did you frequently breakfast, or have lunch or dinner with Mr. Jorgensen?

A. Quite frequently we met casually in the same restaurant in the morning for breakfast.

Q. Was he a very good friend of yours?

A. Yes, I believe he is.

Q. Now, when Mr. Jorgensen phoned you at 3:15 a. m. Saturday morning, did you make an appointment to have breakfast with him the following morning?

A. No.

Q. Did you make any appointment to meet him again at all?

A. No.

Q. What was the next contact that you had with any company official after the phone conversation with Mr. Jorgensen,

927 that you have just related?

A. By contact do you mean the next time I spoke to any company official?

Q. The next time you spoke to any company official after that phone conversation.

A. The next time I saw or was close enough to speak to any company official was on Sunday night, October 6th.

Trial Examiner EICKHOFF. There is a calendar there [indicating] if you want to use it.

MR. ENDISES. That is the 6th—that is right.

By Mr. EDISES:

Q. Who was that official?

A. I met Mr. Rodman and Mr. Dewey.

Q. Where?

A. On Geary Street near Union Square. I was on my way up to the hotel to meet Mr. Loudermilk and Mr. Rone.

Q. What was said at that conversation?

A. I don't recall exactly, excepting that Mr. Rodman showed me a telegram that he had received from the East stating a number of the stations in the East had not gone out on strike. He also told me that they were preparing to open a direct New York-Los Angeles circuit.

Q. And what else was said?

A. That is all.

Q. Where did you hold this conversation? Did you get into a restaurant or something?

928 A. No, we were standing on the sidewalk.

Q. And you have related the whole of that conversation now?

A. Yes.

Q. Now, what was the next contact that you had with any company official?

A. The next contact was a little further along on the same side of the street, when I ran into Mr. Dewey, who was accompanying some men from Los Angeles.

Q. And did you know those men were?

A. I knew Mr. Mair and Mr., I believe, Mr. Pearlson was in the group.

Q. Who were those men?

A. It was either Mr. Pearlson or Mr. Price—I am not sure. I didn't know him personally. It was the first time I had met him.

Q. Who were those men?

A. They were men from the Los Angeles office.

Q. How do you know that?

A. Mr. Dewey told me. I knew Mr. Mair was from Los Angeles. I knew him personally.

Q. When had you met Mr. Mair?

A. He had made a visit here on a vacation a few days prior to that and that is when I first met him.

Q. And what was said at that conversation with Mr. Dewey

929 and these two men?

A. As I recall it, I was going to talk to the fellows from Los Angeles into going back to Los Angeles.

Q. What did Mr. Dewey say?

A. That was the object of my visit to see Mr. Loudermilk and Mr. Rone. They were to meet these people from Los Angeles at

the hotel. We were trying to persuade them to go back to Los Angeles.

Q. What did Mr. Dewey say to that?

A. As I recall it, Mr. Dewey said, "Well, you are either on one side or the other."

I told him, "I am on the other side."

Q. In other words, that you were in favor of the strike?

A. That I was with the strikers, favor or not.

Q. You were with the strikers?

A. Right.

Q. And were working for the strike?

A. That is right.

Q. When did you have your next contact with any company official?

A. I had no further contact with any company officials.

Q. When did you next speak to any company official?

A. The next time I spoke to a company official was when I called Mr. Jorgensen on the telephone on Monday night.

Q. Were you present at the union hall during the day of
930 Monday, October 7th?

A. Yes; I was there in the morning.

Q. Between what hours?

A. I should say that I was there between 9 and 11 a. m.

Q. And was a meeting in progress then?

A. I don't recall whether there was a meeting—yes, oh, yes; there was a meeting on Monday morning.

Q. Do you know who presided?

A. I think Mr. Bash presided, but Mr. Loudermilk had the floor most of the time.

Q. It is a fact, isn't it, that there were meetings held every morning at 10 o'clock during the strike?

A. I don't know. That is the only meeting that I attended at that time.

Q. The only meeting that you attended?

A. Yes.

Q. Do you recall what was being discussed by the group at the hall at that time?

A. The chief discussion was how they could obtain financial assistance for the men who were broke.

Q. Did you take part in that discussion?

A. No.

Q. What else was discussed?

A. I brought up the subject of calling another meeting the following morning, with the object of trimming down our
931 demands on the company.

Q. And what was said to that?

A. It was met favorably and it was decided to have that discussion the following day.

Q. Was there a vote on that question?

A. Yes.

Q. And it was voted?

A. It was voted to call a meeting for the following day to draw up a resolution to be sent to Mr. Salisbury outlining a modified agreement with the company.

Q. Was there any further discussion that you recall?

A. No.

Q. Now, were you present at the union hall at any other time on Monday, October 7th?

A. Yes; I was there at 9 o'clock that night.

Q. When did you get there?

A. About a quarter past 8.

Q. A quarter past 8. And was the meeting in progress?

A. No.

Q. About how many men were present at that time?

A. There was not over six or seven.

Q. Do you remember who they were?

A. Yes. Mr. Rathborne was there, of course, and Mr. Loudermilk, Mr. Clifford.

Q. Mr. Bash?

A. Yes; Mr. Bash was there.

932 Q. And Mr. Palmer?

A. I don't recall Mr. Palmer being there.

Q. Any other names?

A. Those are the only names I can recall. Oh, yes; Mr. O. P. Parker was there.

Q. And you cannot remember any others?

A. No.

Q. What was going on at that time?

A. Nothing in particular. We were waiting for Mr. Rathborne and Mr. Loudermilk to telephone Mr. Salisbury in New York at 9 o'clock.

Q. What were they supposed to telephone him for?

A. To find out how the strike had gone in the East, what was happening, and to get the news. Up to that time we had had nothing.

Q. You say you had had no news at all?

A. No direct news from Mr. Salisbury had reached me, or any of the other members I had spoken to.

Q. Didn't you see any telegrams from Mr. Salisbury?

A. There were some, but nothing definite concerning what had happened in the New York office.

Q. Do you happen to know whether all the telegrams received from Mr. Salisbury were posted on the bulletin board at the union office?

A. I don't know that. I have no way of knowing that.

933 Q. What was Mr. Salisbury doing in New York?

A. Mr. Salisbury was sent to New York——

Mr. MERRICK. (Interrupting.) Are we going over all that again? There is no dispute about that.

Mr. EDISES. I would like to hear it from the witness.

The WITNESS. What do you mean, what was he supposed to be doing?

By Mr. EDISES:

Q. Yes.

A. He was supposed to be negotiating an agreement with the company, either a working or a wage agreement or both.

Q. And do you know what Mr. Salisbury's authority was, the extent of his authority, in connection with those negotiations?

A. No, I do not.

Q. Were you present at a meeting of the union on August 20th?

A. I don't remember.

Q. Did you ever see a copy of the minutes of the meeting of August 20th?

A. Not to my knowledge.

Mr. MERRICK. This sounds very much to me like cross-examination.

Trial Examiner EICKHOFF. It is, and I do not see it is getting us anywhere.

By Mr. EDISES:

934 Q. Now, what other matters were being discussed at the union hall that evening, Monday, October 7th?

A. The chief discussion that evening, after 8 o'clock, while we were waiting for the telephone call, was as to what was doing on the Mackay circuits. They had a little receiver set up in the union hall, and we were endeavoring to tune in to the Mackay circuits and find out what they were doing.

Aside from that, there was no particular discussion.

Q. Did you succeed in finding out what they were doing?

A. I already knew. I had a receiver at my home.

Q. And what did you discover from your work in that connection?

A. Well——

Mr. MERRICK. (Interrupting.) Is this relevant? I have no objection, but I cannot see it adds anything to the case.

A. I had a pretty good picture of what was happening in the Mackay circuits. I tuned in on all of them and I knew what was going on.

By Mr. EDISES:

Q. Were those circuits in operation?

A. Yes.

Q. Actively?

A. Not up to full capacity, still they were on the air and handling traffic.

Q. Do you know whether they were handling their usual volume of traffic?

A. I know they were not.

935 Trial Examiner EICKHOFF. He answered that question. You repeat a lot of them.

By Mr. EDISES:

Q. Was Mr. Burtz present on the evening of October 7th at the union hall?

A. I saw Mr. Burtz at the telephone conversation, but I don't remember him being present before.

Q. Where did you see him after the telephone conversation?

A. He was outside in the hallway leading downstairs.

Q. What—when did you first see him?

A. The first time I recollect seeing him was around—must have been nearly 10 o'clock. It was after the telephone conversation with New York. I don't recall the exact time.

Q. Do you know what was learned from New York as a result of that telephone conversation?

A. Yes.

Q. Were you present?

A. I was present when Mr. Loudermilk explained what Mr. Salisbury had to say. We could overhear his end of the conversation.

Q. And who else was present at the time Mr. Loudermilk explained that?

A. These men that I previously mentioned.

Q. Would you say there were about a dozen in all?

A. Some more men came in during the telephone conversa-

936 tion, I believe. I didn't pay much attention to who they were.

I should think there were about a dozen men present during the conversation, during the telephone conversation.

Q. Now, up to this time you had been going along with the union?

A. Yes.

Q. And working actively for the strike?

A. Actively to the extent of doing picket duty.

Mr. MERRICK. I object to that as already asked and answered, Mr. Examiner.

By Mr. EDISES:

Q. When did you first change your mind, or did you change your mind as a result of anything that happened Monday, October 7th, as to the——

A. (Interrupting.) I hadn't changed my mind at any point. All I did was change my procedure and actions.

Q. In what respect did you change your procedure?

A. I figured it was high time for us to negotiate with the company from this end of the line.

Q. What was the basis of your decision in that respect?

A. Well, many things. It was cumulative—the fact that we hadn't been granted a referendum vote led to considerable dissension and

dissatisfaction among the membership. I had talked to a number of the men and they all expressed the wish to go back to work, practically all of them——

Q. (Interrupting.) Do you remember——

937 Mr. MERRICK. (Interrupting.) I submit that he be allowed to complete his answer.

Trial Examiner EICKHOFF. Yes, let him finish.

A. (Continuing.) And that it looked to me as though the men were going to sneak in the back door one by one instead of marching in as a body as we did.

By Mr. EDISES:

Q. Do you remember to whom you talked in regard to going back to work?

A. I talked to nobody about going back to work, exactly, excepting Mr. Burtz that evening.

Q. Well, now, you state that there was dissension among the men as you learned from having spoken to them?

A. Yes.

Q. From whom did you learn that?

A. The first indication I had of real dissension was when I came down to that hall Monday evening, about a quarter of 8. I was informed that there had been a meeting around 6 o'clock that evening, in which it became known that the men in New York had gone back to work; that a round robin had been signed back there, and the men had gone back in a body, and that the men out here were becoming panicky.

I don't recall who it was that told me.

Q. Somebody told you?

A. As I was going in the hall I met one of the fellows, I think it was Mr.—I cannot think of his name right now—who said

938 that the men were becoming panicky; that he had been up to this meeting around 6 o'clock and it looked to him like the men were breaking ranks, weakening.

Q. Was that the sole source of your feeling that the men were getting panicky?

A. No; not at all. I had spoken to individuals—I wouldn't attempt to name them—but I had spoken to perhaps a dozen men in regard to their attitude concerning the strike and our propects for winning it, and everybody considered the strike to be hopelessly lost that I had spoken to.

Q. To whom did you speak in that connection?

A. I said I couldn't, wouldn't dare to call their names.

Q. You say you spoke to a dozen men. Can't you remember any of them?

Mr. MERRICK. Is that cross-examination?

Trial Examiner EICKHOFF. It is not.

Examination by Trial Examiner EICKHOFF:

Q. Can you name any of these men?

A. I would hesitate to call any man by name.

Q. Do you remember any of the members of the union who expressed dissatisfaction with the strike, to you?

A. Yes.

Q. Can you name any of them—this was before the strike was over?

939 A. Before the strike was over?

Q. Yes.

A. Well, I hesitate to name any individuals that I had spoken to. I have spoken to quite a few of the men, casual discussion, in the meeting and out of the meeting, and quite a few of the men had expressed dissatisfaction with the strike, but I hesitate to name a man that I had spoken to because I——

By Mr. EDISES:

Q. If I were to read you off the list of the names of the members, would that refresh your memory?

A. Even then I would hesitate to name the men exactly.

By Trial Examiner EICKHOFF:

Q. You mean, when you say you would hesitate——

A. (Interrupting.) That I wouldn't be sure; I wouldn't be sure that the man I named was exactly the man that I had discussed that particular thing with.

Q. You have no clear recollection of any particular man?

A. No; a general impression I had gained from a composite conversation with various members.

Q. You can't say today who, on or about that time, among the members were dissatisfied with the strike besides yourself?

A. No, not as individuals.

By Mr. EDISES:

940 Q. And from your conversations with these men you felt that a large majority wanted to go back to work?

A. No, I wouldn't say a large majority. I would say there was a considerable group who were very anxious to go back to work.

Q. In my opinion, was this a majority of the men?

A. In my opinion, if there had been a vote taken there, a majority would have voted to go back to work, and that proved to be the case.

Examination by Trial Examiner EICKHOFF:

Q. You make that statement and you still say you cannot name any individual in that position.

A. Well, I can name the individuals who were forced to join the union during the strike, such as Mr. Wilson, Mr. Buckley, Mr. McLaughlin, Mr. Spanover.

Q. What I meant was, you have a clear recollection of there being dissension in the union?

A. Oh, yes.

Q. And speaking to a number of men who expressed dissatisfaction with the strike?

A. Yes.

Q. And still you cannot name a single individual?
A. I just named several individuals.
Q. Did they take that position?
941 A. Oh, yes, indeed.
Q. Can you name any others?
A. Well, that would be a matter of opinion there. It wouldn't be a matter of remembering exactly.
Q. I don't want your opinion. I want what you remember.
A. No; I couldn't name any others.
Q. You have named three——
Mr. EDISES. (Interrupting.) Four.
A. Four; yes.

By Trial Examiner EICKHOFF:

Q. Other than those four, you cannot recollect any individual?
A. Of course, they don't represent the rank and file. They were men that were really forced into the thing after the strike was called.
Q. Can you remember any?
A. Of those, I am sure.
Q. Can you remember any of the men who theretofore had been members of the union who were dissatisfied with the strike?
A. Yes. Mr. Burtz, for one. In fact, Mr. Burtz was chiefly responsible for calling the men together, or jointly responsible with me.
Q. Any one else?
A. I would like to take advantage of the offer to read over
942 the names. As a matter of fact, I don't come in real close contact with the men down there because my locker is up on another floor and I don't get amongst the bunch, and some of the names are rather hazy in my mind. If you would read the list of names, I might be able to mention some individual.
Trial Examiner EICKHOFF. Have you any objection?
Mr. MERRICK. Not at all.
Trial Examiner EICKHOFF. First, we will take a five minutes recess.
(At this point a recess was taken, after which the proceedings were resumed as follows:)
Trial Examiner EICKHOFF. You may proceed.
Mr. MERRICK. To save time, why don't you show the list to the witness and let him go over it?
Mr. EDISES. I will read right down the line.
Mr. MERRICK. You could save a lot of time, I think, by showing the list to the witness.
Trial Examiner EICKHOFF. How many names are on the list?
Mr. EDISES. Not many. I can indicate them, I think.
Trial Examiner EICKHOFF. Go ahead.

By Mr. EDISES:

Q. Mr. McKercher?
A. No.

Q. Mr. Mulligan?

A. No.

943 Q. Mr. Stevens?

A. Yes.

Q. You discussed that with Mr. Stevens?

A. Yes.

Q. Mr. Foley?

A. No.

Q. Mr. Frear——

Mr. MERRICK. I would like to ask what that list is he is reading from.

Mr. EDISES. A list of the ARTA members.

Mr. MERRICK. ARTA members? Are they members employed by the Mackay Radio?

Mr. EDISES. Mackay Radio employees.

Trial Examiner EICKHOFF. Point to point?

Mr. MERRICK. H. B. office?

Mr. EDISES. I won't ask him who are not employed at the H. B. office.

Mr. MERRICK. How do you know?

Mr. EDISES. I think I do.

Mr. MERRICK. I will give you a list of those at the H. B. office.

Mr. EDISES. Let me have your list—I don't care.

(Counsel Merrick handed Counsel Edises the list of names referred to.)

By Mr. EDISES:

Q. How about Mr. McLaughlin?

944 Mr. MERRICK. I ask if any names are read, they all be read.

Mr. EDISES. I intend to read all of the names.

Mr. MERRICK. You told the Examiner you were only going to read a few. There are 68 names on there. I submit the quickest way to handle it is to show the list of names to the witness and ask him if he can recognize any of them.

Trial Examiner EICKHOFF. How many names are there on the list?

Mr. EDISES. Sixty-eight names.

Trial Examiner EICKHOFF. And they are all members of the Local No. 3 point to point group?

Mr. EDISES. Is this list——

Mr. MERRICK. (Interrupting.) We have no way of knowing whether or not they were members of the union. They were employees of the H. B. office at that time.

Mr. EDISES. Mr. Salisbury, do you know which of these names on here are not members of the H. B. office?

Mr. SALISBURY. The list that I submitted——

Trial Examiner EICKHOFF. (Interrupting.) Confer with him off the record.

(Thereupon counsel Edises conferred with Mr. Salisbury.)

Trial Examiner EICKHOFF. You may now state in the record what group you are referring to.

945 The WITNESS. I am referring to the H. B. employees, regardless of union membership or not, who I believe I believe I discussed this strike situation with.

Trial Examiner EICKHOFF. Who expressed dissatisfaction——

The WITNESS. (Interrupting.) Yes; with the conduct of the strike.

Trial Examiner EICKHOFF. (Continuing.) Leading you to believe there was dissension in the union groups?

The WITNESS. Yes.

Trial Examiner EICKHOFF. Well, now, if counsel will show you a list of the H. B. employees at this time, and you will see if you can give the names of any of those that you had such a conversation with.

The WITNESS. Yes.

Mr. EDISES. May I, at this time, have the reporter read back the questions and answers that Mr. Hatch gave to the names that I have already mentioned?

(The questions and answers referred to were read aloud by the reporter as above recorded.)

Mr. EDISES. Would the Examiner permit me to continue reading the list?

Trial Examiner EICKHOFF. No, show it to the witness. We want to keep the record as brief as we can.

(Thereupon counsel Edises submitted the list of names referred to to the witness.)

946 Trial Examiner EICKHOFF. Do you see on that list the name of a man who discussed the matter with you?

The WITNESS. J. V. Buckley.

By Mr. EDISES:

Q. You have mentioned certain ones already, and now I will ask ——

Trial Examiner EICKHOFF. (Interrupting.) Let's make the answer complete in itself.

A. (Continuing.) J. V. Buckley, R. W. Wilson, A. M. McLaughlin, N. C. Hoxie, Roy Henning, W. C. Adams, C. R. Burtz, H. J. Poy, A. J. Stoklin, E. R. Bevitt, J. Spanover, P. A. Stevens—those are all that I recall, and they are not absolutely guaranteed.

By Mr. EDISES:

Q. What do you mean, they are not all absolutely guaranteed?

A. I am not sure that I discussed the thing with each and every man that I have mentioned. However, to the best of my belief, I did so.

Trial Examiner EICKHOFF. And they expressed in some way dissatisfaction?

The WITNESS. Dissatisfaction with the manner in which the strike was called and was being conducted.

By Mr. EDISES:

Q. When did you discuss the matter with Mr. Hoxie? And where?

Mr. MERRICK. I object to this cross-examination, going into
947 detail, when the only possible purpose is to try to test whether or not his memory is accurate and reliable, and I do not think it is proper and necessary.

Mr. EDISES. The test is hardly necessary, but nevertheless, Mr. Examiner, Mr. Hatch was unable in the first instance to recall a single name of anyone——

Mr. MERRICK. (Interrupting.) That is all talking about cross-examination and I understand the Examiner has not yet——

Trial Examiner EICKHOFF. Let him answer the objection.

Mr. EDISES. (Continuing.) A single name that he could remember. Then he was given a list and he read a whole string of names. Now, he says that he is not sure. Haven't I a right to develop as specifically as possible, by asking him as to each one of those men, when and where he talked to them?

Mr. MERRICK. Do you want me to make my answer to it?

Trial Examiner EICKHOFF. Yes.

Mr. MERRICK. In the first place, I don't think it is at all material, whether he did actually talk with these people or not. This witness has said that he is the electrician, is not closely associated with the men, doesn't know them very well, and it is hard for him to remember the names in connection with the persons; and he was only induced to give these names when pressed by the Examiner, and he says that he thinks, to the best of his recollection, these are the people he talked with. Even if they weren't the people he
948 talked with, I cannot see the bearing on the issues as to whether or not—I suppose what he is trying to do is that his impression was erroneous, and a majority of the men were not against the strike, or that the men that he talked with that did express themselves in favor of it, were the men that the attorney for the Board is going to attempt to show were representing the company in connection with the strike.

But all of that is cross-examination, and it doesn't seem to me that it is relevant or material.

Mr. EDISES. In the first instance, Mr. Hatch testified that he knew that a large majority of the men were in favor of going back to work. Subsequently he modified that statement and, I believe, used the word "majority."

Mr. MERRICK. He is your witness and you are bound by his answers.

Mr. EDISES. He again stated that a large group of men wanted to go back to work. Finally, when he was asked for specific names, he couldn't recall any. He gave, as a reason, the fact that he was not familiar with these men.

May I now be permitted to ask him about those names in order to determine whether or not those persons that he mentioned were

merely casual acquaintances or possibly old acquaintances and friends of his?

Mr. MERRICK. For what purpose, attacking his credibility?

949 Mr. EDISES. I am entitled to impeach this witness on specific facts, if I can, regardless of whose witness he is.

Mr. MERRICK. Not in my opinion. Let's have the Examiner rule on it.

Mr. EDISES. It is true, I cannot impeach him by general reference to his reputation or credibility, but I certainly am entitled to impeach him in regard to his testimony to specific facts.

Mr. MERRICK. Not by his own testimony.

Trial Examiner EICKHOFF. On what basis, Mr. Edises? To cross examine a witness, it seems to me, you must either bring out hostility on his part, or that he is an adverse witness; that is to say, definitely in the camp of the respondent, or that he is such an unapt witness that you are unable to bring out his testimony without leading him or cross examining him. And I do not think you have gone that far with this witness.

Mr. EDISES. I submit that all the testimony that he has given in regard to the dissension in the ranks, especially when he has been pressed on the matter, indicates that he is an adverse witness. All this evidence is in that direction.

Trial Examiner EICKHOFF. A man who has a different opinion in the union from the majority is not necessarily an adverse witness.

Mr. EDISES. But if I can show that his opinion was not

950 prompted by the facts, did not arise on the basis that he has given for his having come to that opinion, certainly I am thereby demonstrating the question of whether or not he is adverse.

Trial Examiner EICKHOFF. If you can show that. But you haven't shown that. That is the point.

Mr. EDISES. That is what I am trying to show now.

Trial Examiner EICKHOFF. I don't see that your last question will develop that, or could develop it—when and where he talked to these men.

Mr. EDISES. Suppose I can show he didn't talk to them?

Trial Examiner EICKHOFF. You have first got to establish some basis on which you can impeach your witness.

Mr. EDISES. I hereby request that all of the men mentioned by Mr. Hatch be produced in this courtroom.

Mr. MERRICK. I decline to do so. Subpoena them if you wish.

Mr. EDISES. I ask for the production of these men in this courtroom——

Trial Examiner EICKHOFF. Have I the power to do so?

Mr. EDISES. If you haven't, we will subpoena them in court.

Mr. MERRICK. Does the Examiner think this is really relevant in any way—what he thought before the meeting was

951 held, whether he thought a majority were in favor or were not in favor, whether he was mistaken or not mistaken?

Trial Examiner EICKHOFF. My position is simply this: That so far as this hearing is concerned, nothing has been established which will permit Mr. Edises to cross examine this witness at this time.

Mr. MERRICK. I was simply addressing it to the call of the attorney for the Board for the production of all these men. I cannot see how it would aid the Examiner in any way in deciding the issues here. Whether or not this witness had these conversations, and whether or not he has correctly stated the attitude they had at that time; does not seem to me to have any bearing whatsoever.

Mr. EDISES. Mr. Examiner, if the witnesses were produced, and they testified that they didn't have any such conversations with Mr. Hatch, would that, in your opinion, qualify Mr. Hatch as an adverse witness?

Trial Examiner EICKHOFF. I don't know that it would. It might make him out a liar, or a man who has an inaccurate recollection.

By Mr. EDISES:

Q. Mr. Hatch, can you recall the time and place that you spoke to any of these men that you have mentioned?

A. No; I cannot.

Q. Do you know whether it was on the picket line or in the
952 union hall?

Mr. MERRICK. I object. It has been asked and answered.

Trial Examiner EICKHOFF. The question has been asked and answered. Objection sustained.

By Mr. EDISES:

Q. Was there any specific change in circumstances of the strike on Monday which led you to believe that it would be advisable to try to reach the company and get the H. B. men back to work?

A. Yes.

Q. What was that?

A. The fact that Mr. Salisbury advised Mr. Loudermilk and Mr. Rathborne on the telephone Monday night that only a small number of men had gone out in the New York office, and the fact that a telegram was received here that Monday night, and I was shown it, saying that seven men were arriving the following morning by plane from New York.

Q. That was the thing that led you to change your mind, or change your conduct?

A. That was the thing that made it seem necessary to contact the company here, to find out their stand in regard to the men who were out, and in turn to find out the stand of the men.

Q. Were those telegrams discussed at the Union hall while you were present?

A. Not openly discussed; no.

953 Q. What do you mean, not openly discussed?

A. The telegram received from Mr. Salisbury was not shown to all the members present, as far as I know. It was brought to me by Mr. Bash.

Q. How do you know that it was not shown to the other members?

A. I don't know positively. I believe it was not.

Q. What is the basis for your belief?

A. The fact that I was present there and I would have known had the telegram been shown to every one, and I would have overheard discussion of the matter. There was not.

Q. Were you there when the telegram was brought into the hall?

A. Yes.

Q. And what was done with the telegram when it was brought in?

A. It was handed to Mr.—Mr. Bash or Mr. Rathborne.

Q. And what did either of them do?

A. Mr. Bash showed me the telegrams.

Q. Then what did he do with it?

A. I don't know.

Q. You don't know when whether he concealed it from any of the other men or not?

A. No; I do not.

Q. Were there any other circumstances that led you to feel
954 that it would be advisable to get in touch with the company and get the H. B. men back to work?

A. Yes. From what I overheard from Mr. Loudermilk's conversation with Mr. Salisbury on the telephone, that is, that the situation in New York had reached an impasse, it was proposed by Mr. Loudermilk to Mr. Salisbury that he submit the whole strike question to the Federal Arbitration Board.

I knew that any such proceeding as that would be a long drawn out affair in all probability, and that too much damage would be done before it was finally settled unless direct action were taken by the men.

Q. And did you express yourself to that effect to the men who were assembled there?

A. No; I did not.

Q. What was your reason for not expressing yourself to that effect?

Mr. MERRICK. I don't particularly care, but it is not a proper question, as to what his reasons are.

Trial Examiner EICKHOFF. I do not think it is, either, but I won't rule it out unless there is an objection.

Mr. MERRICK. I notice when I am cross examining you frequently rule them out without objection.

Trial Examiner EICKHOFF. Let's not go into that.

Mr. MERRICK. I object at this time.

Trial Examiner EICKHOFF. Do you object?

Mr. MERRICK. Yes.

955 Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Did you say anything to anybody at that time about your sentiments on the matter?

A. No; I did not. I kept quiet.

Q. You were a member of the union at that time, were you not?
A. Oh, yes.
Q. Do you remember what discussion took place in the union hall among the men after Loudermilk phoned to New York?
A. I don't recall the exact discussion, but it seems to me that the majority of the men present favored letting Mr. Salisbury handle the matter in New York.
Q. What do you mean by your statement, favored letting Mr. Salisbury handle the matter?
A. They were willing to wait and not take any further action or press him any further, but let him go ahead with his plans for taking the matter up with the Arbitration Board and going ahead on that basis.
Q. And did you hear any further discussion along those lines?
A. No. I left shortly after the telephone conversation, and I started out in the hall where I met Mr. Burtz.
Q. When you left, the situation was just as you pictured it, namely, that the majority of the men favored letting Mr. Salisbury handle it. Is that correct?
956 A. The majority of the men present during that telephone conversation. There were only about a dozen men present.
Q. And when you left you understood that your proposition for a meeting the following morning at 10 o'clock was still existent, is that correct?
A. Yes.
Q. And the strike was still officially going on; is that correct?
A. Yes.
Q. What did you do after you left the union hall?
A. Perhaps I had better explain what happened before I left the hall.
Q. Surely, go right ahead.
A. As I was preparing to leave I met Mr. Burtz in the hallway. He asked me, "What is your opinion of this situation?"
I told him frankly that I thought the thing was a loss because the strike was lost; and that further continuance of the strike would only result in further damage to the union.
Q. What else was said?
A. Mr. Burtz asked me, "What do you think of getting in touch with Mr. Jorgensen or Mr. Rodman and finding out how we stand?"
My reply was that I was heartily in favor of it, but
957 that I considered it irregular, that is, that it was up to the union leaders to take such action. However, I stated that I had spoken to Mr. Bash on Sunday morning when I had received information that the New York group had gone back to work, and Mr. Bash told me to keep quiet and not to spread such disquieting news among the membership. I had nothing to hope for from Mr. Bash as far as negotiating with the company here was concerned.

I explained that to Mr. Bash. After further discussion we decided that the best thing to do, the best thing that we could do, would be to call up Mr. Jorgensen and find out how we stood.

Q. Where were you when you come to this decision?

A. We were standing in the hall at the ARTA headquarters.

Q. And did you inform the men there as to your decision?

A. No, we didn't discuss the matter with any one.

Q. Then what did you do?

A. We went down to a telephone booth and I happened to be in the lead and I called up Mr. Jorgensen on the telephone.

Q. Was there a telephone at the union headquarters?

A. Yes.

Q. And what was said in this conversation with Mr. Jorgensen? By the way, what time was it, to the best of your recollection, when you phoned Mr. Jorgensen?

A. The telephone conversation with Mr. Salisbury was
958 finished about 9:15, I believe; possibly earlier. And I believe it must have been around 10 o'clock when I called Mr. Jorgensen.

Q. And where did you phone him?

A. I phoned him at the office. I took a chance on him being at the office, and he was there.

Q. He was there?

A. Yes.

Q. What was said in this conversation?

A. I asked him, "What is the status of these men that are out on strike? Are they locked out or can they come back to work if they want to?"

He said, "If the men will come back in a body, they will be put back to work as though nothing had happened."

Q. What else was said?

A. I then put Mr. Burtz on the telephone. He talked to Mr. Jorgensen. I don't know what was said between them. I wasn't following it very closely. Then afterwards I spoke to Mr. Jorgensen as soon as Mr. Burtz finished speaking to him, and I said that it looked to me as though the men should be given an opportunity to say whether they wanted to come back to work or not under those conditions, and that I would undertake to get the men together, provided Mr. Jorgensen would furnish me a list of all the telephones and addresses of all the men at the H. B. office.

959 Q. What did Mr. Jorgensen say to that?

A. He said he would be glad to furnish such a list. I asked him where he could meet me and give me the list. He said anywhere that I would suggest.

I didn't want to go up to the office because I would have to run through the picket line. In fact, I had avoided the office since the beginning of the strike; otherwise I would have gotten it right there.

Q. Was anything further said in the conversation?

A. No, That was all, excepting I made an appointment with Mr. Jorgensen to meet me at my residence and bring his list.

Q. In that conversation, telephone conversation, was anything said about certain of the men not being permitted to come back to work?

A. Not a word.

Q. You are quite sure of that?

A. Positive.

Examination by Trial Examiner EICKHOFF:

Q. You realize that you were subjecting yourself to criticism on the part of your union?

A. Indeed I did.

Q. And you were taking that chance?

A. Yes, taking that chance for the benefit of the men as a whole.

Q. And yourself?

960 A. And myself, yes. I admit I had a selfish motive.

Q. You felt that you couldn't put the idea over at the regular union meeting?

A. I was quite sure that I could not.

By Mr. EDISES:

Q. Did Mr. Jorgensen ask you whether you had any authority from the union?

A. No.

By Trial Examiner EICKHOFF:

Q. Did he appreciate, as far as you could tell from your telephone conversation, that this was irregular as far as the union was concerned?

A. That I don't know. I don't believe that angle of it occurred to him.

Q. Do you know how he recognized you, that is to say, as an officer of the union or just an individual?

A. Just as an individual.

Q. Who was taking this on himself?

A. Yes.

By Mr. EDISES:

Q. Why did you phone Mr. Jorgensen? Why didn't you phone Mr. Rodman or Captain Dodd?

Mr. MERRICK. I object to the question.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Did you make any effort to phone Mr. Rodman?

A. No.

Q. Did you make any effort to phone Captain Dodd?

961 Q. Did you make any effort to get just yourself taken back to work?

A. No.

Mr. MERRICK. I object to this. It isn't proper direct examination.

Trial Examiner EICKHOFF. It has been answered.

By Mr. EDISES:

Q. What happened then after your telephone conversation with Mr. Jorgensen?

Trial Examiner EICKHOFF. Be more specific.

By Mr. EDISES:

Q. What did you do after you left the telephone booth?

A. I had my automobile, and Mr. Burtz had his. We drove out to my residence on 15th Avenue, where we waited for Mr. Jorgensen to arrive with his list.

He arrived in about a half hour.

Q. At your residence?

A. Yes.

Q. Were you present on Thursday, October 24, at a conference at the Regional Labor Board—that was on Thursday—at which Mr. Rodman, Mr. Jorgensen, Captain Dodd, Mr. Wagenet, Mr. Phillips, Mrs. Rossiter, and yourself were present?

A. Yes, sir.

Mr. MERRICK. I object to that question.

Trial Examiner EICKHOFF. I will see what it develops. I will allow it.

962 Mr. EDISES. I will withdraw that question.

Trial Examiner EICKHOFF. And the answer may be stricken.

By Mr. EDISES:

Q. What time did Mr. Jorgensen arrive at your house?

Mr. MERRICK. He said half an hour after the telephone conversation.

Mr. EDISES. Let's get the time.

Mr. MERRICK. He said the telephone conversation was at 10 o'clock.

Mr. EDISES. Let's have it from the witness.

A. I don't recall exactly, but it was somewhere near 11 o'clock.

Trial Examiner EICKHOFF. P. M.?

The WITNESS. P. M.; yes, sir.

By Mr. EDISES:

Q. And who was present when Mr. Jorgensen arrived?

A. Myself and Mr. Burtz.

Q. And what was said and done after he arrived?

A. The first thing that was said, after Mr. Jorgensen had produced his list of all the H. B. employees, was that there were certain men whose returning would be contingent upon certain requirements.

Examination by Trial Examiner EICKHOFF:

Q. Did he explain why?

963 A. No, he didn't explain why.

Q. Did you ask him?

A. No, I didn't ask him.

Q. He merely said——

A. (Interrupting.) Certain men whose applications would have to be passed upon by Mr. Stone.

By Mr. EDISES:

Q. Did he state that there were certain men who could not be taken back to work?

A. No, he didn't state that at all. He stated their applications would have to be approved by the head office in New York before final action could be taken.

Q. And no further explanation was offered in regard to these eleven men?

A. No. None asked and none offered.

Trial Examiner EICKHOFF. Did he tell you what the names were?

A. Yes. In fact, he checked the names on his list.

By Mr. EDISES:

Q. He checked the names?

A. Yes.

Trial Examiner EICKHOFF. Did you ask him any questions about those names?

The WITNESS. No.

Trial Examiner EICKHOFF. You just accepted them?

The WITNESS. I accepted his list. That list of names was a surprise to me, but I didn't question it.

964 By Mr. EDISES:

Q. Well, what was said then?

A. The next thing that was discussed was where we would do our telephoning to get the men together and where we would have the meeting.

I first intended to have the meeting at my house. There was only one telephone there and I realized, after we got out there, that it would create a disturbance in the neighborhood to have a large group of men there at that time of the night. So I suggested that we go down to the Bellevue Hotel.

The reason that I suggested the Bellevue Hotel was because I attended meetings of the Radio Engineers and the Signal Corps Club there and I was familiar with the layout and knew they had rooms suitable for such a purpose. Also, that they had telephones, plenty of telephones. That is why I suggested the Bellevue.

We agreed on the Bellevue and we headed down there immediately in our separate cars.

Q. About what time did you go down there?

A. I don't recall the exact time, but it must have been after midnight; probably around 12:30.

Q. Was Mr. Jorgensen with you?

A. No, he went in his own automobile.

Q. But he arrived at the hotel about the same time?

A. We all arrived about the same time, yes.

965 Examination by Trial Examiner EICKHOFF:

Q. Did you phone for reservations for rooms?

A. No.

Q. Was anything said about who would pay for the rooms?

A. Not until we arrived at the hotel itself. Mr. Jorgensen offered to pay for the room. I didn't object to that.

Q. Did he say whether he would pay it out of his own pocket, or how?

A. No; he didn't say. I assumed he would be reimbursed if he did pay for it.

Mr. EDISES. I ask that what he assumed go out of the record.

Trial Examiner EICKHOFF. It is in response to my question and I will leave it in.

By Mr. EDISES:

Q. Who ordered the room?

A. Why, I think we both spoke at the same time. I did most of the talking. I described what sort of a room we wanted, and, in fact, I asked for the ballroom or the Red room, or one of those other rooms they have up on the mezzanine floor. The clerk explained they weren't available. He asked how many men we expected, and he said he had a suite he thought would be suitable.

Q. When you speak of both of you doing some of the talking, you are referring to Mr. Jorgensen?

966 A. Mr. Jorgensen and myself; yes.

Q. Do you know who the clerk was who was on duty at that time?

A. No; I do not.

Q. Do you recall having made a statement at the time and place I mentioned previously, namely, the conference at the offices of the Labor Board——

Mr. MERRICK. (Interrupting.) I object to any reference to this conference.

By Mr. EDISES:

Q. At which you made——

Mr. MERRICK. (Interrupting.) Can we have a ruling?

Trial Examiner EICKHOFF. Wait until we hear the question.

By Mr. EDISES:

Q. At which you made a statement——

Mr. MERRICK. (Interrupting.) I don't care to have it on the record, and whether or not he said something is obviously cross examination.

Trial Examiner EICKHOFF. The last question was withdrawn, as I recall it.

Mr. EDISES. I am now referring to something else. I am going to ask him if he made a certain statement.

Mr. MERRICK. The purpose for that is to attempt to impeach him.

Mr. EDISES. By a prior contradictory statement; yes.

967 Mr. MERRICK. I object.

Trial Examiner EICKHOFF. I won't permit that yet. On what basis, Mr. Edises, do you feel that I should allow you to cross-examine this witness?

Mr. EDISES. I hardly feel it is cross-examination.

Trial Examiner EICKHOFF. Or impeach him?

Mr. EDISES. Am I not entitled to impeach a witness if he makes a statement on the stand which is contradictory to something he stated before, and I have no way of knowing that he is going to make that contradictory statement?

Trial Examiner EICKHOFF. He is your witness, isn't he?

Mr. EDISES. Surely, Mr. Examiner, it is permitted to impeach a witness even though he is your own witness when you are surprised by contradictory statements.

Trial Examiner EICKHOFF. If you show that you are surprised by this contradictory statement.

Mr. EDISES. In order to show that it would be necessary for me to ask him a question which——

Trial Examiner EICKHOFF. Have you been over the testimony with this witness?

Mr. EDISES. I have a record, a verbatim transcript of Mr. Hatch's testimony made at that time.

Trial Examiner EICKHOFF. Have you gone over his testimony with him prior to this hearing?

968 Mr. EDISES. Not personally, no. I have a verbatim transcript.

Trial Examiner EICKHOFF. Has he made some statement here during his testimony today which conflicts with some statement that he made earlier?

Mr. EDISES. I believe he has.

Trial Examiner. EICKHOFF. And that has taken you by surprise?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. Then I will permit that.

Mr. MERRICK. May I state here that at the time the Board first notified the company that charged had been filed with them against the company, Mr. Wagenet requested that certain representatives of the company come down and discuss this matter with him. This request was forwarded to New York, and I authorized Mr. Rodman and Mr. Dodd and Mr. Jorgensen to go and discuss it with Mr. Wagenet on the understanding—and I am informed that Mr. Wagenet was informed of that—that any conversations were not to be made of record; that it was strictly off the record and for the sole purpose of trying to cooperate with him in disposing of this complaint with as much ease and with as little delay as possible.

Mr. Rodman informed me that he did go down there and talked with Mr. Wagenet and acquainted him with the conditions under which he was authorized to be there and talk with ——

969 I submit it is extremely unethical and in violation of the conditions under which the company tried to cooperate with the Board, for them to, in the first place, have made any such record of the conversations; and in the second place, to try to use them in this proceeding as a means of impeaching one of the witnesses.

Mr. EDISES. Were you present at that conversation, at that conference?

Mr. MERRICK. I don't know what conference you are referring to.

Mr. EDISES. The one with the Board.

Mr. MERRICK. Obviously I wasn't.

Mr. EDISES. On what do you base your knowledge of conditions under which it was held?

Mr. MERRICK. I have given the dates.

Trial Examiner EICKHOFF. Mr. Edises, have you any answering statement to make?

Mr. EDISES. Yes, Mr. Examiner, I have.

It is my understanding that nothing at all was said about the conference being of a confidential nature; that it was voluntarily done; that Mr. Rodman and these other officials came up voluntarily. Moreover, that at all times while they were present a reporter was present taking down the testimony, without objection on the part of Mr. Rodman or anyone else.

970 Trial Examiner EICKHOFF. Of course, I cannot exclude any evidence on the ground of some stipulation that is not before me. It is up to the Board whether they want to go into that or not.

Mr. EDISES. Mr. Examiner, the statement that I have just made is, I am informed, substantially correct. Nevertheless I am willing to withdraw the question which I have just asked Mr. Hatch.

Trial Examiner EICKHOFF. If this witness has taken you by surprise and testified to something which you have reason to believe would be different, I will permit some cross-examination on that point.

Mr. EDISES. Well, I would prefer not to ask him that question, Mr. Examiner. If I may be permitted, I should like to withdraw the last question that I have asked Mr. Hatch.

Trial Examiner EICKHOFF. It will be considered withdrawn.

Mr. EDISES. Pardon?

Trial Examiner EICKHOFF. It will be considered withdrawn.

I think we might as well adjourn now until 2 o'clock.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m.)

971 AFTER RECESS

(The hearing was resumed at 2:00 o'clock p. m., pursuant to taking of recess.)

Trial Examiner EICKHOFF. Both ready?

Mr. EDISES. Both ready.

Trial Examiner EICKHOFF. Mr. Hatch.

ROBERT IRVIN HATCH, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Mr. MERRICK. I understood you were willing to have Mr. Henderson called now. He is here.

Trial Examiner EICKHOFF. They are going to take another witness out of order, Mr. Hatch.

Mr. MERRICK. Mr. Henderson is not here.

Mr. EDISES. Do you know whether Mr. Henderson was going to be here? You gave me to understand he was going to be here at 2 o'clock.

Mr. MERRICK. You amuse me, Mr. Edises.

Mr. EDISES. You do me, too.

Mr. MERRICK. If you want to take your responsibility for getting the witnesses yourself, I am perfectly willing you should.

Mr. EDISES. Thank you very much.

Mr. Examiner, I wish at this time to make a request in con-
972 nection with the further examination of Mr. Hatch. I believe that, in view of his testimony to date, and in view of the provisions of the Act, and the purposes and nature of the administrative hearing, that we should be permitted to treat Mr. Hatch at least from now on as if he were under cross-examination.

I call your attention to Section 10–B of the Act which provides, among other things, that in any such proceedings, the rule of evidence prevailing in courts of law or equity should not be controlling. Obviously, that was put in for a purpose. The main reason, I believe, was that the object in a hearing of this kind ought to bring out all the facts. In this particular type of proceeding it seems to me to be important not only to bring out the facts but also to bring out the reasons behind those facts. In other words, we ought to have a wider opportunity for bringing out those facts, by being permitted to ask questions which ordinarily would only be asked on cross-examination.

I also feel that here is one occasion certainly when the common law rules after the binding nature of testimony, would be a definite hindrance to our bringing out all the important facts, and of the applications of those facts.

My second reason is that the real parties and interests in this action is not the union, but the men. It is true that the union is named in the complaint as the petitioner. Nevertheless, the
973 union is not seeking anything for itself. It is asking for no relief of any kind. It is simply asking as the agent which filed the petition on behalf of the men. It is the men who are seeking relief—Mr. Bash and the others. They are the ones that are asking reinstatement. The Union will not be affected one way or the other by the outcome of this proceeding.

Mr. Hatch has testified that he was opposed to Mr. Bash, and likewise to Mr. Salisbury and the leaders of the union. Mr. Hatch is a party to this proceeding. We are trying to determine whether or not he ought to be reinstated to his job.

Now it is impossible, it would not be feasible to examine this witness in regard to questions affecting Mr. Bash as if he were hostile.

And, on the other hand, in regard to the other witnesses, treat him as if he were our own witness.

Furthermore, I submit that the testimony of this witness to date shows clearly that he is both hostile and adverse, and I submit the following reasons as some of those bearing on the point:

First, knowing that an ARTA meeting was to be called for the following morning, knowing that the strike was still in existence, knowing that the strike was being conducted through the union, nevertheless he went ahead, without revealing any of his plans to any union member with the exception of Mr. Burtz, without speaking to any union official or making his purposes known at a meeting,
974 to call a secret meeting away from ARTA, got in touch with company officials without revealing any of his purposes or intentions, to the union.

Moreover, he knew, as he himself has testified, that a majority of the members of ARTA had that morning voted to continue the strike, and that that decision remained in force when he left the hall, and that a meeting had been scheduled for the following morning.

Nevertheless he went ahead and behaved as I have indicated.

Another fact is that he was unable to remember definitely a single member of ARTA to whom he spoke, or the time and place of that conversation, at which time he learned of the supposed dissension of ARTA and members.

Again, I call your attention to the fact that, as he himself has testified, that when Mr. Jorgensen told him that eleven men would be discriminated against in a certain way, that he didn't say a word, he didn't object in any way, but taking Mr. Jorgensen's word, went ahead and made no effort whatever to get in touch with these men; raised no objection; did not present any of the demands which he knew the men had previously voted on, but simply went ahead and called this meeting to the exclusion of these men.

I also wish finally to point out that Mr. Hatch's position was not the same as others—as other operators; that he was a kind of
975 boss, in fact having two men working under him, and I submit that for the reasons I have indicated, and especially in view of the fact at the present time he is testifying to a state of affairs when he is acting hand in hand with the company officials, and in connection with the attempted calling off of this strike. I submit that for these reasons he is definitely established as both hostile and adverse; and in order that we may be able to bring out all the facts in this hearing, that we be permitted to ask him questions such as we would if he were under cross examination.

Trial Examiner EICKHOFF. Any reply, Mr. Merrick?

Mr. MERRICK. Well, he states, in his opinion the adverse party here is not the union but the individuals; but, as I understand it, it is quite contrary to the facts and the procedure under which we have been conducting the hearing so far.

If he were correct, the only person to whom he says this witness is adverse is Bash. He is only one of the five.

If you permit cross examination of this witness by the attorney for the Board as against one of the complaining parties, but not as against another, I don't see how such a thing is possible. There is no showing of hostility towards the others. As a matter of fact, in my opinion, he has not shown he has any hostility towards Bash. He said he thought he was not guiding the strike as it should have been.

He thought that he was making serious errors in the conduct
976 of the strike, but that is as far as he went.

He hasn't said he has hostile feelings toward the union or the others, representatives of it, who conducted the strike, or to the majority of the members in it.

I don't see any basis as yet for finding that he is hostile, whether you regard the union as the party, or the five complainants as the five parties.

Trial Examiner EICKHOFF. Do you contend that I should disregard the rules of evidence?

Mr. EDISES. I simply contend that in this instance we should be permitted, in view of the showing that has been made by this witness on the stand, to treat him as a hostile or adverse witness. I don't feel that it is necessary even to state that the rules of evidence should be disregarded.

In other words, I feel that even on the basis of the application of the jury trial rules of evidence, we should be permitted to treat him as hostile or adverse, but if you believe that no such showing has been made, then I feel that this is a proper case for the application of that provision in the Act which would otherwise be completely meaningless.

Trial Examiner EICKHOFF. But that is on your mere say-so. Suppose the counsel for the other side asked the same latitude? Suppose counsel for the other side said "I haven't established that this witness is hostile or adverse, but I would like to cross examine?" Should I permit him?

permit him?

977 Mr. EDISES. Certainly, no such latitude, Mr. Examiner, should be given unless there is some reason of policy or something necessary to bring out of it facts which would dictate that such ought to be done; but the basis for my statement is that the interests of justice in this case require that at the present time we examine Mr. Hatch fully and completely as to every incident that took place; and I again call your attention to the series of statements and acts testified to by Mr. Hatch which indicate that he threw the union overboard and went ahead on his own hook.

Mr. MERRICK. On that point, I would like to point out that all the other witnesses called for the Board as the five complaining members of the union, testified that they are perfectly willing now to throw the union overboard and go back to work if the company will let them, regardless of the fate of the others, although they know that a boycott has been called against the company to force the company to reinstate all of them.

As far as Mr. Hatch's attitude toward the company is concerned I am not very familiar with it, but from what I have been able to ascertain, Mr. Hatch was regarded by the company as being extremely hostile. They were very much upset because he left his work. He was treated pretty harshly, and I haven't seen anything yet to indicate that Mr. Hatch is particularly in love with the
978 company in comparison with any other employee. He said he felt something would be done very shortly; men would be taken in by the company to replace him, and that is why he went ahead to do everything he could to get these men together and induce the company to take them back.

I certainly regard him as much hostile towards the company as he is towards the union or towards the individual complainants.

Trial Examiner EICKHOFF. I feel that you have not established this witness as hostile or adverse. He may be; I don't know.

Let me say this: If at any time during the course of your examination you are taken by surprise—that is, the witness gives some testimony contrary to what you expected him to give, you have reasonable ground to expect different testimony, or if you have difficulty in bringing out the facts, you are trying to bring out, and those facts are material, I will permit great latitude in the examination; but I am not going to throw the thing wide open and let counsel on either or both sides, just to conduct the examination according to their desires at the moment.

If I apply it to one side I must necessarily do it for the other. I don't know what you are getting at, but it seems to me a lot of this could be brought out by straight examination.

979 Mr. EDISES. I understand, Mr. Examiner, Mr. Henderson just came in. If Mr. Merrick still desires him to go on the stand now——

Mr. MERRICK. (Interrupting.) Is Mr. Henderson here?

Trial Examiner EICKHOFF. Step down just for a minute, Mr. Hatch.

(Witness Hatch temporarily excused.)

LYLE SAMUEL HENDERSON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination by Mr. EDISES:

Q. What is your name?
A. Lyle Samuel Henderson.
Q. And your address?
A. Half Moon Bay.
Q. Are you employed by the Mackay Radio Company?
A. Yes.
Q. In what capacity?
A. Radio operator, marine station.
Q. Were you at the marine station?
A. Yes.
Q. Where is that?

A. It is Lobitos—that is the name of the place.
Q. Lobitos?
A. Yes.
980 Q. Were you so employed during the time of the recent strike?
A. Yes.
Q. Do you remember an occasion on October 4, 1935, the afternoon of that day, on which you received—on which you spoke to Mr. Rodman over the telephone?
A. Yes.
Q. And do you recall what was said during that conversation?
A. Well, yes. I recall more or less what took place in the conversation. However, it was a lengthy—it last approximately 20 minutes, I would say—so there were naturally a few things——
Mr. MERRICK. Will you fix the time, please, Mr. Edises?
Mr. EDISES. October 4.

By Mr. EDISES:

Q. At approximately what time were you present?
A. Very shortly after 4 o'clock. I would say five minutes after 4.
Q. You were on duty at that time?
A. Yes.
Q. Did Mr. Rodman call you, or did you call Mr. Rodman?
A. I phoned the station.
Q. As nearly as you can recall, what was said during that conversation?
A. Well, as I remember, the first statement was in regards
981 to the negotiations that were taking place in New York that day between the ARTA and Mackay; and as I recall it, he—Mr. Rodman—said, "I suppose you know the negotiations are finished in New York?"

That was the first, the way the conversation started out. At that time I didn't know that they were finished. In fact, I didn't know for sure that they were negotiating on that day. I understood they were, but I hadn't received definite word, so I did not know that the negotiaions had already—were stopped, as far as that goes.

Mr. MERRICK. Speak a little louder. I have difficulty in hearing you.

Trial Examiner EICKHOFF. Take your time. You needn't be nervous.

The WITNESS. After saying that the negotiations were over, I told Mr. Rodman I wasn't aware of this, which I wasn't at the time. I don't remember just exactly what was said right after that, except that he told me that the ARTA, our officials, or rather the men that were handling this matter for us—the negotiating committee—had presented two agreements with the understanding, or with the saying that either one could be—if either one was accepted the other would be rejected, or words to that effect.

By Mr. EDISES:

Q. Was anything said about the union?

Mr. Henderson, I am sure that it is perfectly possible for
982 you to speak freely. I am quite positive anything you say won't be held against you by Mr. Rodman, who is as interested as we are in bringing out the facts in this case.

Trial Examiner EICKHOFF. About how many things did you talk about, Mr. Henderson?

The WITNESS. Well, Mr. Rodman told me—it was during the first part of the conversation, he told me that negotiations were all over. He said—started to explain that it would be impossible for the company, well—accept the agreement in the form that it was, he told them, because of financial conditions and so forth.

Then he told me that the men who presented it were practically willing, or rather, wanted almost to sell out and just present one agreement and let the other one go. These agreements, one affected the marine operators, and the other the point to point.

By Mr. EDISES:

Q. Did I understand you to say that Mr. Rodman stated that persons presenting this agreement were ready to sell out, is that correct?

A. It is the same thing. If they presented one agreement and were willing to overlook the other, that is a sell-out, because the understanding by the union was that the agreements must be handled simultaneously, one with the other.

Q. Do you remember if those words were used, "sell-out?"

A. I couldn't say exactly, but he said they were willing to
983 present one agreement and let the other one go, disregarding the other one. That is a sell-out.

Q. What, if anything, was said by Mr. Rodman about ARTA, or leaders of ARTA?

A. They were accused of communism.

Q. Mr. Rodman accused them of communism?

A. Not the men themselves. The heads of the organization, the people that were—well, the ARTA officials, as far as that goes.

Q. How did he characterize them?

A. Well, as I remember, I voiced my surprise at the fact that this negotiating committee was willing to——

Trial Examiner EICKHOFF. Abandon?

The WITNESS. Yes; I was kind of shocked. I said, I believe, it was a surprise to me. Mr. Rodman said it was typical of the type of men we had back there handling this business. In fact, he said—didn't mention any names, however—he just applied to the organization, or the officials of the organization—said they were a bunch of communists, and that they could prove that.

By Mr. EDISES:

Q. Did he say anything else about the union?

A. Well, he tried to impress upon me the kind of fellows we had back there, representing us, that were ready to doublecross us, as far as that goes.

Examination by Trial Examiner EICKHOFF:

984 By Trial Examiner EICKHOFF:

Q. Do you know what Mr. Rodman's purpose was in calling you, or the station?

A. Mr. Rodman first talked to Mr. Watkins. Mr. Watkins is the manager of the station. I don't know what the conversation was except that Mr. Watkins called me to the phone shortly afterwards.

Q. Did Mr. Rodman state why he wanted to talk to you?

A. Yes; he did. I am the local delegate of that branch of the union. Mr. Rodman said that he thought by talking to me, being a delegate, I could tell everything to the men, the idea of the thing. He called me up to tell me why the company could not negotiate.

Q. This was before the strike?

A. Yes.

Q. Did he propose that you do anything besides tell the other men what he said?

A. Well, he just told me—tried to explain to the fellows what they were up against. It was impossible to negotiate at that time. In other words, had them think twice before they did anything rash, before there was any remark made about the strike.

Q. Did you talk about anything else at that time?

A. Well——

Q. What did you talk about most of the time?

A. Mostly explaining why they couldn't handle this agree-
985 ment, and of course took up some time talking about the heads of the ARTA being misrepresenting us, and not keeping us informed about what was really going on.

By Mr. EDISES:

Q. Did Mr. Rodman ask you to use your influence to persuade the men not to go on strike?

A. He didn't use those words. No; he asked me if I would go around and explain to the boys why we—why negotiations fell through. I told him that I would type out what he told me, put it on the bulletin board, and let the men read it over and make up their own minds because I didn't feel I should try to influence anyone, one way or the other.

I told him whatever I said to him over the phone was strictly personal and did not affect the other men; that it was up to them to make up their own minds, one way or the other, whichever they wanted to do.

Q. Did Mr. Rodman mention any officials of the union by name when he accused them of being communists?

A. No; he did not mention the men by name. However, it is obvious who it was.

Trial Examiner EICKHOFF. Never mind what was obvious.

The WITNESS. Well, he said the men that—the man that was taking Mr. Pyle's place on the West Coast, I believe.

By Mr. EDISES:

Q. Who does that mean?

A. That would be Mr. Rathborne.

Trial Examiner EICKHOFF. Then, as I understand it, the
986 purpose of Mr. Rodman calling you was to advise you, first, why the company couldn't do business on these agreements, and, second, how your representatives were handling the matter, is that it?

The WITNESS. Well, I don't know—yes, that would be it. However, it seemed that, by bringing up all this about the officials, that it was more or less to have the men lose faith in the organization by accusing them—well, of selling out, and not keeping us informed of what actually did take place.

Mr. MERRICK. I ask that the witness be instructed to speak a little louder. I can't hear him.

Trial Examiner EICKHOFF. Yes.

By Mr. EDISES:

Q. Was there any discussion with Mr. Rodman in regard to the posting of this message? Do you recall anything in connection with that?

A. You mean the conversation as he told me?

Q. Yes.

A. I told Mr. Rodman I would type this out and put it up on the board for the men, and he said, "No." He said not to do that, that he would talk to them personally.

Q. Now——

Examination by Trial Examiner EICKHOFF:

Q. Did he give you any reason why he didn't want it typed and posted?

987 A. No; no reason that I remember.

Q. Was that the full extent of your conversation, as you recall?

A. Well, there was—While we were talking about communism, Mr. Rodman told me that the magazine "ARTA" (that is the publication of the ARTA) was to be barred from the mail for being obscene. And I couldn't quite understand how that was.

Trial Examiner EICKHOFF. Never mind what you thought about it. We just want to get the substance of this conversation between the two of you, either the actual words or the substance of those words that passed between you.

The WITNESS. Now, I believe that was all. Mr. Rodman expressed the fact that all of the men down there at the station had been with the company for a considerable length of time and that they had responsibility, and it was just up to them to think everything over about this thing before they did anything on the spur of the moment.

By Mr. EDISES:

Q. Now, do you recall—Did you see Mr. Russ, at any time on October 4?

A. Yes. I am not certain of the exact time, but I would say around seven.

Q. Where did you see him?

A. Down at the station.

Q. Who was present then?

A. Mr. Russ and Mr. Gunderson.

988 Q. What was said at that time?

A. Well——

Trial Examiner EICKHOFF. First of all, what was the purpose of this visit, do you know?

The WITNESS. Mr. Russ said they had just been informed—well, I guess, they expected trouble. Negotiations had fallen through and they had been informed that there would be a walk-out, or the men were going on strike that night.

By Mr. EDISES:

Q. Mr. Russ stated that they had information that the men were going on strike, is that correct?

A. He didn't say "strike." He said they had information that negotiations were all over, back in New York; and he came out. He didn't have to say why he was out there.

Q. But was the fact that the men were going to walk out mentioned?

A. It was very shortly after he came out there. I didn't remember whether it was mentioned when he first came, but within a very few minutes we had instructions that there would be a strike called.

Q. What was that last?

A. We were informed that there would be a strike called that night. It was very shortly before Mr. Russ came out there.

Q. Who told you that?

A. Mr. Rathborne phoned us at 5:30.

Q. Do you remember anything else that was said by Mr.

989 Russ, or yourself, at the time of this conversation? Did he ask you to do anything?

Examination by Trial Examiner EICKHOFF:

Q. Who were they representing?

A. They were officials of the Mackay Company, Mr. Russ, marine superintendent, Mr. Gunderson's assistant.

Q. They were representing the union?

A. No, sir.

Q. Did they indicate to you what they wanted you to do in the event of a strike or walk-out?

A. Mr. Russ said that there had been an awful lot of misrepresentation by the union. We really did not know what was taking place, and that negotiations back east were very apt to be entirely opposite from what we were told they were. He told us that the

men that were representing us couldn't be depended on a great deal; and for that reason not to jump to any conclusion; think things over before we went out.

By Mr. EDISES:

Q. Did he say anything further about ARTA, except that the men who represented you could not be trusted?

A. No, except he claimed that there always had been a great deal of misrepresentation in the union. We were not informed of conditions on the west coast as they were in the east coast.

Q. Was there a lot of talk along those lines about the union?

990 A. Considerably; I can't remember but it all centered around the main fact that things were in a mess and that the men we were putting our confidence in were not very trustworthy.

Q. Do you and the other men at Lobitos walk out at 12 midnight that night?

A. Yes, sir.

Q. You had formed a picket line?

A. There was no picket line formed that first night of the strike.

Q. When was the picket line formed?

A. I would say around seven o'clock the next morning, the morning of the 5th.

Q. When did you first learn that the strike was off?

A. Well, let's see—I heard about it about nine o'clock, the morning that the boys at the H. B. office went back to work.

Q. That is the San Francisco office?

A. They had the meeting the night before and we went back to work. I don't know just when they went back to work, the next morning some time.

Q. You are speaking of Tuesday, October 8th?

A. Yes, that would be it.

Q. You say you learned about it at nine o'clock. How did you learn about it?

991 A. I came down to take my turn on the picket line and was told there was no more picket line. I went on in to the city, or Half Moon Bay, and saw the boys; and they had received word that morning around eight or nine o'clock.

Q. Did they say who they had received word from?

A. They phoned in to some members of the union—or else the union phoned out, I am not definite.

Q. When did you go back to work?

A. Four o'clock—four p. m. on the 9th.

Q. Four p. m. on the 9th?

A. Yes, sir.

Q. Did you formally re-apply for work at that time?

A. Yes.

Q. In what form did that take?

A. It was a telegram—in telegraph form. However, I believe it was mailed just saying "I hereby apply for reinstatement."

Q. When did you sign that? Are you sure it was on the day that you went back to work?

A. Yes.

Trial Examiner EICKHOFF. To whom was this addressed, and where?

The WITNESS. I am not certain. I believe it was addressed to the station manager, I really couldn't say.

Trial Examiner EICKHOFF. In San Francisco or Half Moon
992 Bay—well, never mind.

By Mr. EDISES:

Q. When did the other employees at Lobitos go back to work?

A. On the 9th.

Q. What time of the day?

A. I believe the first men went back to work at eight a. m.

Q. Eight a. m.?

A. Yes.

Q. Did you receive any notice of any kind that a meeting was to be held at the Bellevue Hotel Monday night, October 7, or Tuesday morning?

A. No, we didn't know a thing about it until the next day.

Q. Who do you mean by "we"?

A. Anyone at the station; any of the men who were on strike.

Q. No one received any notice at Lobitos?

A. No one who was on—I can't say about the men who were at the station.

Q. Have you been asked to sign any kind of petition repudiating the ARTA organization, in any way?

A. No.

Q. Was a Mr. McDonough ever down at Lobitos?

A. Yes, he was down there. I don't remember the date, but he was down there one evening.

Q. Did you speak to him?

A. No.

993 Q. Did you see him?

A. Yes; I saw him.

Q. What was he doing?

A. Well, he was talking to Mr. Watkins most of the time.

Q. Did he talk to any of the men?

A. Well, I was just leaving—just going off duty when he came out there.

Q. Do you know what the purpose of his visit was?

Mr. MERRICK. I object.

Trial Examiner EICKHOFF. Sustained, unless he can show how he could have known it.

By Mr. EDISES:

Q. You were starting to make a statement about—You say you were just leaving the office?

A. That is the reason I didn't see who he talked to. This was about the same time I came into the station. I was off shift; I went off home.

Q. Did any of the other men talk to you about McDonough's activities, or what he said to them?

A. No.

Q. Did Mr. Watkins say anything to you shortly after Mr. McDonough left?

A. Not to me.

Q. Did he say to anybody else that you know?

A. Well, he spoke to one of the men but I am not certain which one it was. The statement was just passed around
994 among the fellows and I can't say which one of the men originated it.

Q. What was that——

Mr. MERRICK. I object.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Do you know who spoke to you about McDonough's activities?

A. Well, practically every man down there had his own conclusions.

Q. Mention one of the men to whom you spoke about McDonough.

A. Well, Mr. Ferguson, I spoke to him about him.

Q. What did he tell you about him?

Mr. MERRICK. I object to this hearsay.

Trial Examiner EICKHOFF. I will allow it. Do you remember what he said to you?

The WITNESS. Well, it really—well, the way the conversation came up was, we had just received word that this agreement was passed around H. B. for signing, withdrawing from the ARTA; and Mr. Watkins had suggested to Mr. Ferguson that we make up an agreement like that of our own and send in.

Mr. MERRICK. Is he testifying to the conversation? Mr. Ferguson told him this?

Trial Examiner EICKHOFF. This is the way the conversation arose.

Mr. MERRICK. Yes, but he is saying Mr. Watkins had
995 said something to Mr. Ferguson. I think that should not be included in the record unless he shows that he was present when it was said. I move to strike.

Trial Examiner EICKHOFF. Granted.

By Mr. EDISES:

Q. Did Mr. Ferguson tell you Mr. Watkins had told him anything about getting up such an agreement?

A. Mr. Watkins told me——

Trial Examiner EICKHOFF. (Interrupting.) How do you know that?

The WITNESS. Mr. Ferguson told me, yes——

Trial Examiner EICKHOFF. (Interrupting.) Tell us what he told you.

Mr. MERRICK. My objection runs to this conversation.

The WITNESS. Mr. Watkins seemed to think it a fine idea if the men down there would draw up a round robin letter and send it in to Mr. Rodman, saying they had withdrawn from the ARTA; and that is as far as it got. Moreover, Mr. Watkins didn't suggest anything like that until after Mr. McDonough had been down there.

Trial Examiner EICKHOFF. Did Mr. Ferguson tell you the purpose of Mr. McDonough's visit?

The WITNESS. Well, there wasn't anything definite about Mr. McDonough, as far as I know.

Trial Examiner EICKHOFF. (Interrupting.) Well, if there was nothing definite, why don't——

996 The WITNESS. (Interrupting.) No.

Mr. EDISES. No further questions.

Cross-examination by Mr. MERRICK:

Q. Mr. Henderson, are you a communist?

Mr EDISES. I object to that question.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Do you know whether or not any of the officials of ARTA are communists?

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Do you know of any close relationship between the marine division of the ARTA and any communist organization?

Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. What relationship, if any, did your organization have with the Maritime Federation?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. I will allow that question.

A. Well——

Trial Examiner EICKHOFF. (Interrupting.) What do you mean, "Maritime Association?" Do you mean the marine group of ARTA?

Mr. MERRICK. No; I think that is the title of it—"Maritime Federation of the Pacific Coast."

997 Trial Examiner EICKHOFF. Well, I will sustain the objection to this question. I thought you meant the marine group of ARTA.

Mr. MERRICK. No.

By Mr. MERRICK:

Q. What time did you say that Mr. Rathborne telephoned you to tell you that there was to be a strike at midnight on October 4?

A. Mr. Rathborne informed me first——

Trial Examiner EICKHOFF. Just a minute! What time?

The WITNESS. Well, I would say 5:30.

By Mr. MERRICK:

Q. 5:30 in the afternoon?

A. Yes.

Q. Did he tell you at that time a strike would be called at midnight?

A. No; he said the negotiations had fallen then; that they hadn't decided definitely. I am not certain what time it was decided that there would be a strike; but it was, as I say, just at the time Mr. Russ came out there, or in a very few minutes later.

Q. What else did Mr. Rathborne say to you in this conversation?

A. He said that the negotiations were finished in New York, and there was nothing else to do. He said he would let me know later.

Q. Did he tell you he had their word from the union men
998 in New York to that effect?

A. Yes; he just received word that negotiations were off.

Q. You are quite sure that was 5:30 in the afternoon?

A. It wasn't before then; it might have been a few minutes later. I would say between 5:30 and 5:40 in the afternoon.

Q. What were the hours which you were on duty October 4?

A. From 4:00 p. m. to midnight.

Q. So that when you returned to work on Tuesday, October 8th, at 4:00 p. m., that was because—that was the time which you were supposed to report for duty. You weren't supposed to report earlier?

A. It was the 9th, I believe.

Q. The 9th? You didn't go back to work at all Tuesday, the 8th? Four o'clock was the hour at which you were supposed to report?

A. Yes.

Q. You said you heard on Tuesday, the 8th, at about 9 o'clock, that the strike was off. But you didn't go back to work that afternoon. Have you mixed your dates? Do you want to look at a calendar, or anything?

A. Well, I'd like to refer to a calendar, if possible. I am not certain of the exact date.

Trial Examiner EICKHOFF. Do you wish to refer to a calendar?

The WITNESS. Yes.

999 (Witness examines calendar.)

The WITNESS. Well, I went on duty at midnight—that would be the 4th.

By Mr. MERRICK:

Q. That was the end of your hour of duty anyway.

A. Yes; and I didn't return to work for four days. It was on the fourth day—the last day—the day that I was informed of this was my day off, as I remember it. We work six days a week.

Q. Tuesday was your day off, October 8th?

A. Yes; then the next day at 4:00 o'clock I was due to return to work.

Q. What causes you to fix the time that Mr. Russ came down to the station on the night of October 4, at 7 o'clock? Are you at all sure of that time?

A. We have several things that take place just about that time of night, in a general routine; that, as I recall one of them, is I have certain work to do on the Morse wire, and I remember he came in at that time.

Q. That was the only hour during the course of the evening that you do that kind of work?

A. It varies; it isn't exactly on the hour. It would be ten minutes on either side.

Q. And you do it just once in the evening?

A. Yes.

1000 Q. You feel reasonably sure that Mr. Russ came to your station at seven o'clock, as you do about the correctness and accuracy of any of the rest of the testimony you have given?

A. To tell the truth, no; that is the matter I am the least accurate on—when Mr. Russ arrived.

Q. You said you fixed it according to the time you did something.

A. That was when he came into the room. I don't know how long he had been on the station ground.

Q. You are sure he was there approximately at 7 o'clock?

A. Yes.

Q. As sure as you are of any of the rest of your testimony?

Mr. EDISES. I object to this on the grounds it is already asked and answered, Mr. Examiner.

Trial Examiner EICKHOFF. Overruled.

By Mr. MERRICK:

Q. You said you did something and only did it once that evening. You fixed it according to that.

Trial Examiner EICKHOFF. Will you answer the question?

The WITNESS. It is kind of hard. I will say "Yes."

Trial Examiner EICKHOFF. You are not sure the answer is right though?

The WITNESS. It is kind of hard to remember the exact hours.

By Mr. MERRICK:

Q. Are you sure it wasn't eleven o'clock that he appeared there? You are sure he was there before?

1001 A. Yes, before eleven.

Q. Before ten o'clock?

A. Yes.

Q. You said that both Mr. Rodman and Mr. Russ had told you that your union leaders were not to be trusted? Did you believe them?

A. No.

Q. Did they influence your action in any way by telling you that?

A. No.

Q. Do you believe that was a correct statement?

A. What?

Q. That your union leaders were untrustworthy?

A. I do not.

Q. You don't believe that?

A. No.

Q. You believe that the leadership of the union kept you properly informed, carried out your instructions, and acted only in the interests of the men during the strike negotiations?

A. It has never been shown otherwise.

Q. Is the strike still on against Mackay Radio?

Mr. EDISES. At what time? Will you specify the time?

By Mr. MERRICK:

Q. I say, is the strike still on?

Mr. EDISES. Oh, I beg your pardon.

1002 I thought you said "At what time?"

A. The strike? No, there is a boycott against Mackay Radio.

By Mr. MERRICK:

Q. But the strike is off, is that correct?

A. We are all back to work.

Q. When did the strike end?

A. I don't know when it was officially ended.

Q. Do you know whether it is officially ended?

A. They conceded it—Mr. Rathborne told us we might as well return to work; it was all over, yes.

Q. When did he first tell you that?

A. Well, he told me that personally the day that I returned to work.

Q. On Wednesday, the 9th?

A. Yes.

Q. Did he tell you that the strike had ended?

A. No, he said "It is over; you might as well return to work if you can get back in the company."

Q. Did he tell the other men that were employed at the Lobitos station that the strike was over?

A. He must have; they were all down there.

Q. You don't know whether or not?

A. I couldn't say. I talked to him personally over the phone when I was informed, but all the other men were informed—knew about it.

1003 Q. You say you are a national delegate?

A. Just a local.

Q. Local what?

A. More or less of a delegate; it is really a mailing address down there for that group of men.

Q. You are a delegate to that?

A. That group of men at Lobitos. We have a sort of—well, there are 13 of us down there.

Q. You are sort of the acting head of it?

A. Well, I am the one who gets all the mail from the union for distribution among the men.

Q. Didn't you receive any mail that indicated when the strike was officially ended?

A. I can't remember ever receiving any.

Q. When Mr. Rathborne told you the strike was over, did you ask him who declared it over, or anything about the circumstances?

A. Well, I didn't—I thought that was all that was necessary. He was the representative here in San Francisco. I thought, as long as he told as to return, that was official.

Q. Whatever Mr. Rathborne said, went?

A. Not exactly—we used our own common sense on some things.

Q. You used your common sense in determining whether or not what he said was binding?

1004 A. You just said "I did whatever Mr. Rathborne told me." That isn't right. In that case I did, yes.

Q. Did you ever vote for the strike?

A. I didn't personally. I was on duty the night the vote was taken.

Q. What night was that?

A. I can't remember.

Q. Approximately?

A. It was so long ago I can't remember approximately.

Q. How long ago was it? You say "so long ago." What month was it?

A. I don't know. I know there was a vote taken. I know that practically——

Q. (Interrupting.) How do you know?

A. Practically every man in the station got up that morning. That night I was on duty.

Q. You don't know when it was?

A. Well——

Q. (Interrupting). Was it in June?

A. I can't remember. This whole matter has been hanging fire since last February. There have been so many meetings called I don't remember which one was for the strike vote. However, I know there was a vote taken.

Q. Did you ever see a copy of the minutes of that meeting?

1005 A. I can't recall that I did. However, I received first hand information from half a dozen of the members that were at this meeting as to what took place.

Q. But you can't remember even the month in which it took place?

Trial Examiner EICKHOFF. He said so three times, I think.

Mr. MERRICK. Well, I am prodding his memory a little bit.

Trial Examiner EICKHOFF. I think it is getting beyond that. I don't see that is so important.

Mr. MERRICK. Probably it isn't.

The WITNESS. There was a vote taken; that is all that was necessary.

Q. You never did vote?

A. No; I was on duty.

Q. The only one vote you know of that was ever taken on the subject?

A. Yes, the only special vote that I know of.

Q. You mentioned the boycott. Was that boycott—What was that boycott you were talking about?

A. Well, it is to induce various companies and people to handle their traffic through the opposition instead of through the Mackay system.

Q. What is the opposition?

A. Right in this location, that is the Globe Wireless and
1006 Radio Marine Corporation of America.

Q. Yes; not the Western Union?

A. Yes; their land wires.

Q. To give those companies the business instead of what companies?

A. Instead of the International System.

Q. The International System?

A. Yes.

Q. That is, the boycott runs against the Postal Telegraph Company, the Commercial Cable Company, Commercial Pacific Cables, the All American Cable Company, and the Mackay Radio Companies?

A. Yes.

Q. Who declared this boycott?

A. Well—I can't say where it originated. Where it first was, I can't say. Ship operators, I imagine, started it first.

Q. Any vote ever taken on the subject, to your knowledge?

A. Not to my knowledge.

Q. You never heard of any division or any local or ARTA voting on that question?

A. They may have had an oral vote—that is quite possible.

Q. Is the boycott declared by the American Radio Telegraphists' Association or just some division of it?

A. The ARTA is behind the boycott, certainly.

Q. That is the national organization?

1007 A. Yes.

Q. And that includes both marine and point to point divisions?

A. I imagine so; yes.

Q. You know so, don't you?

A. Well, I was thinking of the official angle. I don't know whether there were votes or how it was handled, but so long as

the ARTA is in sympathy with the boycott, I know it takes in both the marine and point to point divisions.

Mr. EDISES. Mr. Examiner, may the reporter read the last answer?

Trial Examiner EICKHOFF. Yes. Mr. Reporter, read the last answer, please.

(The answer referred to was read aloud by the reporter as above recorded.)

By Mr. MERRICK:

Q. And both the point to point members and marine members are supposed to do what they can to assist the boycott, is that correct?

A. Well, naturally, if a man is working on a job, on a Mackay job, he can't do anything towards the boycott.

Q. He can solicit the customers of the company and ask them to use the facilities of the competitors?

Mr. EDISES. I object to that question. It is just submitting an idea or a notion or a proposition to this witness and asking
1008 him to put his stamp of approval on it. It is hardly a proper question.

Trial Examiner EICKHOFF. Overruled; but I don't think there need to be much cross examination along this line, because the witness has said two or three times he is just guessing at this. He doesn't know anything about it officially.

By Mr. MERRICK:

Q. That is so, isn't it?

Mr, EDISES. I object to this question, Mr. Examiner.

Trial Examiner EICKHOFF. Overruled.

A. I never heard of such a thing. A man could, but I don't—I never heard of any pressure being put on him to do such a thing.

Q. You have never been asked to do that?

A. Certainly not.

Q. Have you ever seen a document similar to that before?

(Counsel Merrick hands document to witness.)

A. I don't remember ever receiving one like that; no.

Q. You don't think you have ever seen that before?

A. I may have seen it, but I never had one addressed to me.

Trial Examiner EICKHOFF. Do you remember ever having seen it?

The WITNESS. I can't say I ever have—no.

By Mr. MERRICK:

Q. Have you ever seen any request by the national headquarters to cooperate in this boycott and try to see that the customers of the Mackay Radio were induced to use the facilities of other companies?

1008-A A. No.

Q. I think you said you were a regular reader of "ARTA," didn't you?

A. I said there was a mailing address, more or less.

Q. I think you referred to the magazine. You said that—I have forgotten.

A. Oh, the reading of "ARTA"?

Q. Yes; the official organ.

A. Yes.

Q. Do you remember ever seeing a notice on the back page of the issue, requesting anyone to aid in the boycott of Mackay Radio?

Mr. EDISES. I object to that.

Trial Examiner EICKHOFF. I think that is in evidence, Mr. Merrick.

By Mr. MERRICK:

Q. You have seen that before?

(Counsel Merrick hands witness copy of "ARTA.")

A. Yes; I have seen that.

Q. It is exhibit—respondent's Exhibit No. 5. That appears to be addressed to everyone that reads this issue, isn't it?

A. That doesn't mean you have to jump for it.

Q. Do you understand that this is a paid advertisement in this magazine, or is this an expression or opinion of the officials of the union?

1008–B A. I couldn't say which it is. I don't see anything—I don't think it would be a paid advertisement.

Q. You don't think so?

A. It don't appear to.

Q. "Start, spread, and keep up a vigorous boycott until Mackay Radio enters into an agreement with the American Radio Telegraphists' Association. Boycott Mackay into reinstating its black-listed employees."

Trial Examiner EICKHOFF. It speaks for itself. Whether or not he said "Yes" or "No" it wouldn't change it.

Mr. MERRICK. Well, I can either ask him to read it himself, or ask him to read from the exhibit and ask the witness some questions regarding it.

Trial Examiner EICKHOFF. But don't say "Do you think so" because it obviously does.

Mr. MERRICK. All right, if the Examiner requests, I will read from here, if you like that phraseology.

Trial Examiner EICKHOFF. Yes.

By Mr. MERRICK:

Q. "Send your messages via RCA, Western Union, and Globe." Have you ever followed that admonition to "Start, spread, and keep up a vigorous boycott?"

A. I have not.

Q. Never done anything in aid of the boycott at all?

A. I happen to work for the company that is being boycotted.

Q. That makes a difference?

A. Well, naturally.

1009 Q. That is only—this boycott is supposed to apply to employees of companies other than Mackey Radio?

A. A man that has an independent job that can route his traffic through the opposition; yes.

Q. Are you a marine operator?

A. I work the marine station. I am under the point to point division, ARTA.

Q. Have you ever requested operators on board ships to send their messages other than to Mackay Radio stations?

A. Certainly not.

Trial Examiner EICKHOFF. Are you nearly through this witness, Mr. Merrick?

Mr. MERRICK. Yes; I think so.

By Mr. MERRICK:

Q. Do you exert yourself in every way that you can, that it is possible, while on duty, to get a signal of a ship that is calling a Mackey Radio station?

A. If I didn't stand the best watch I know how, I wouldn't go down there to go to work.

Q. You haven't at any time failed to tune as closely as you might, in the hope that thereby you might escape catching a signal calling the Mackay Radio station?

A. Why, certainly not. What would I be standing a watch for if I was going to overlook the calls?

Q. Well, there might be other questions asked. Why you belong to a union that is boycotting the company you work for.

1010 Mr. EDISES. I object.

Trial Examiner EICKHOFF. That is no question. He only said, "There might be." May this witness be excused?

Mr. EDISES. One moment, please.

No questions.

Trial Examiner EICKHOFF. This witness may be excused?

Mr. MERRICK. That is all; yes.

(Witness excused.)

Trial Examiner EICKHOFF. We will take a five minute recess.

(At this point a recess was taken after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. Do you wish to call Mr. Hatch, Mr. Edises?

Mr. EDISES. Mr. Hatch.

Trial Examiner EICKHOFF. You are still under oath?

Mr. HATCH. Yes.

ROBERT IRVIN HATCH resumed the stand and testified further as follows:

Mr. EDISES. Mr. Merrick, have you the records that were requested yesterday—the error records?

Mr. MERRICK. You mean of Mr. Hatch?

Mr. EDISES. No; the request was made for the error records of the men in the H. B. office on January 1, to date.

1011 Mr. MERRICK. I wish to state my position in respect to the request from counsel for the production of documents and records that I have. I have attempted to accommodate him in every

respect, and I have received no reciprocal assistance from him, and that I therefore from now on, decline to produce anything except under subpena.

Mr. EDISES. May I at this time request the production, formally request the production of the error records and ask that the error records of the men in the H. B. office—and request that Mr. Merrick be asked to produce them. I believe that that procedure is according to provision of the Act.

Trial Examiner EICKHOFF. If they were in court, I think I might have some power before the hearing—I might have some power. The procedure outlined is——

Mr. MERRICK (interrupting). I wish to make it clear that if the attorney for the Board will extend the same courtesies to me, I am perfectly willing to produce whatever I can obtain; but in the absence of such reciprocal arrangement, I prefer to let him proceed according to the methods provided by law.

Mr. EDISES. Mr. Merrick, may I state at this time I have not intended any refusal on my part to produce any evidence as a gesture, or in order to be contentious, or anything like that.

I do remember that you did ask for all of the minutes,
1012 for example, of the organization. I stated that I didn't feel that it was material or proper to bring all of the minutes in, but I did state I would bring in all the minutes from May 1 to date, May 1, 1935, to date. I have those available and will be glad to let you have them on request.

Now, if there has been any failure on my part to produce specific things that have been asked for, I regret that such has been the case. If you will name those specific things, I promise you I will do everything in my power to produce them, provided you don't ask for sweeping orders, or a great deal of material which is not relevant.

Mr. MERRICK. Well, you are passing upon relevancy. I don't know whether you would intend to confer the same privilege to pass upon the relevancy of the documents you request.

Mr. EDISES. Well, the only difference, apparently, in our situation is that Section 11 provides that for the purpose of all hearings and investigations which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it, the Board shall have certain powers.

Mr. MERRICK. The Board hasn't, as I am aware, expressed any opinion on this subject.

Mr. EDISES. I am of the impression that my asking for those
1013 documents as an agent of the Board would indicate my belief that they are relevant. However, I don't think that there is any point in our arguing about that. If you will tell me specifically what you want, I think you will find I am not trying to conceal any if it.

Mr. MERRICK. I have asked for the official literature of the union in regard to the strike, and the boycott; and you have declined to produce any.

Mr. EDISES. I don't know that I have declined to produce any. I stated, if you will mention the document you have in mind, I will try to obtain it.

Mr. MERRICK. I think that is specific enough. That is as specific as I can be. No matter what I produce, you have told me that is not official. So I ask you to produce the official.

Mr. EDISES. Is it your opinion, Mr. Merrick, that such a request, not naming any specific documents, but simply characterizing in general a species of material, would be the subject of a subpoena duces tecum—would be the subject of a subpoena duces tecum by any court?

Mr. MERRICK. Yes.

Mr. EDISES. Would you be able to tell me what authority you have? You can show me—I am perfectly willing if you will let me have a case, that will indicate my interpretation is wrong. I would be very happy to modify my opinion; but it is still my impression that
1014 such a sweeping request, not asking for specific documents, has been declared by the Supreme Court to be contrary to the law of undue searches and seizures.

Mr. MERRICK. If you want to try out the questions on the basis of what the Supreme Court holds to be unconstitutional, I am perfectly willing to do the same thing. On the other hand, if you ask me to proceed as a reasonable person with a reasonable desire to facilitate this hearing, why then, that is under a little different basis; and I won't proceed on either basis. I think the request for strike literature, which has been prepared pursuant to the direction of responsible officers of the San Francisco local of this union, or by any other chapter of the local, or by the national officers, is sufficiently definite; and enough to enable you to comply with the request.

It doesn't certainly include any more documents than you have called for in this request that I produce all the error records from January 1, 1935, for all the employees of the H. B. office.

Mr. EDISES. Except that I have identified particularly what I want; whereas you have made a request which requires an interpretation on the party producing it as to whether or not that is the document. The materials I have asked for are perfectly easy to identify. In your case you have asked for all of the materials bearing on
1015 the strike. That requires certainly the exercise of a degree of choice on the part of the person making the search, which, I believe, would make it contrary to the holdings of the Supreme Court.

Mr. MERRICK. I have nothing further to say on the subject. I disagree with you, and I also think that it is not necessary to confine your action to what you think the court would uphold on a subpoena duces tecum.

Mr, EDISES. Mr. Merrick you are—your request, as it is phrased, in our opinion, will apply to all the material put out by the ARTA, national, and by every local. Now, if you are willing to reframe your question and limit it to material put out by the local, and consequently, being the official conduct of the local, then I think your request could be met, and will be met.

Mr. MERRICK. I would like to have both that put out by the local and by the national, so far as you are able to obtain it. I am not asking you to make any unreasonable search. So far as it is available here, and any member of the union that is in San Francisco has knowledge of it, that is all I am asking for.

Mr. EDISES. Now, that last is extremely generous. So far as any member of the union in San Francisco has knowledge of it—I am certainly not in a position to say what any member of the union has knowledge of.

1016 Mr. MERRICK. Any officer of the union here in San Francisco.

Mr. EDISES. I take it now, your request is limited to national and Local No. 3, is that correct?

Mr. MERRICK. That is correct.

Mr. EDISES. Well, according to the terms of your reframed request, I will make an effort to obtain all the materials. I assume you mean periodicals and statements and so on, meant for public consumption.

Mr. MERRICK. Not necessarily public—any official literature that is sent to the members of the union as such, or to delegates of the union as such.

Mr. EDISES. Official literature?

Mr. MERRICK. That is it.

Mr. EDISES. You are not asking for a lot of private memos?

Mr. MERRICK. Not at all.

Mr. EDISES. Well, I'll try to get that, and I trust in view of that fact it will not be necessary to resort to legal process in my request to you; and I renew my request at this time for the production of those error records, and also the time sheet for October 8th, or the material from which the pay roll is compiled for that day.

Mr. MERRICK. Do you wish them at this time?

Mr. EDISES. Not necessarily just now—just so that I get them this afternoon.

1017 By Mr. EDISES:

Q. Mr. Hatch, you mentioned that at the time Mr. Jorgensen came to your house he brought you a list of persons—of names—of persons——

Mr. MERRICK (interrupting). I don't think that is a correct statement. Oh, I beg you pardon.

By Mr. EDISES:

Q. At any rate, you mentioned a list of names as having been given to you, or mentioned to you by Mr. Jorgensen as persons who would not be taken back to work on the same terms as the other men, is that correct?

A. The list of names that he read out to me was from the entire list of the H. B. personnel. He had no separate list.

Q. Subsequently he mentioned from that list a number of names, is that correct?

A. He checked them off.

Q. Checked them off, and you testified you were surprised when you were—you were surprised when you saw those names? What did you mean by that?

A. I don't recall testifying I was surprised. You mean, in this morning's testimony?

Q. Yes.

Trial Examiner EICKHOFF. Were you surprised?

The WITNESS. Well, it was a complete surprise to me—that is, the names on the list. The fact that there was any special list of the sort was a surprise to me. Nothing of the sort was mentioned until we met out at my house.

1018-1020 By Mr. EDISES:

Q. Did you express your surprise to Mr. Jorgensen?

A. No.

Q. Did you have any conversation whatever with Mr. Jorgensen in regard to why those names were on the lost?

A. I don't remember having any conversation regarding that specifically; no.

Q. Any conversation along those lines relating to that?

A. No.

Q. In other words, after Mr. Jorgensen gave you this list without saying anything further, you went ahead and started to telephone the men?

A. Not from my house. No; we first went to the hotel.

Q. You first went to the hotel?

A. Yes.

Q. Now, did you agree between you as to who was to do the telephoning?

A. You mean between myself and Mr. Jorgensen?

Q. Mr. Jorgensen?

A. No; Mr. Jorgensen was out of the picture from then on.

Q. He was out of the picture from then on except that he did pay for the room?

A. I don't know who paid for the room. I don't know. I do know he signed the register.

Q. It is my understanding that he paid for the room. I
1021 would like to have the witness clear that up.

A. He signed the register and I assumed that he would be reimbursed. I don't know who would make the final payment.

Q. You assumed he would be reimbursed by the company?

A. Yes; by the company.

Q. Did you pay for the room?

A. No.

Q. Do you know whether Mr. Burtz paid for the room?

A. No; in fact I am quite sure he did not; but I don't know that as a positive fact.

Q. Do you know—after you arrived at the hotel, did you go and commence telephoning?

A. We telephoned from the booths in the lobby of the hotel. There are a number of telephone booths right near the desk.

Q. How did you determine who was to phone who?

A. I believe there were three sheets listing the H. B. personnel. We made no particular selection as to who should take what sheet. I believe I had two of the sheets and Mr. Burtz had one.

Q. Did you make any effort to call the eleven names who were mentioned—which were mentioned by Mr. Jorgensen?

A. No.

Q. It was understood before you started phoning, that those persons were not to be phoned?

A. No; there wasn't any restriction against phoning them.
1022 There was no understanding between Mr. Jorgensen and myself regarding those men at all. There was an understanding between Mr. Burtz and myself. We discussed the matter, and we decided that we would not go out of our way to try to get those men for the simple reason that the other men present would have to vote "Yes" or "No" regarding these men. That is, whether we would go back to work under the conditions.

These men were in more or less of a special category and naturally their presence there would be more or less embarrassing to the other men.

Q. When you speak of a special category, to what are you referring?

A. That those men would have to submit applications which would not be passed upon finally until they had been passed upon by Mr. Stone, or the head office in New York.

Q. That was told you by Mr. Jorgensen?

A. Yes; Mr. Jorgensen did make it clear. I would like to add to my previous testimony that, in our conversation at my house he stressed the point that the men gathered at the meeting must be fully advised and aware of the fact that these men would have to submit applications which would be passed upon in New York finally.

Q. Did you understand that clearly?

A. Thoroughly.

Q. Then your previous testimony, that nothing whatever was
1023 said between you and Mr. Jorgensen is incorrect?

A. That was an error.

Q. That was an error?

A. Yes.

Q. Did you have any further discussion with Mr. Jorgensen at that time that you discussed these names? Did you have any further discussion along similar lines?

A. No; our meeting at my house was very brief. As soon as we had decided upon where we were going to do the telephoning, why we immediately proceeded there. There was little or no discussion at my house.

Examination by Trial Examiner EICKHOFF:

Q. You said you weren't going to go out of your way to phone these men. What did you mean?

A. I meant that these men were readily available—if they presented themselves at the meeting that there would be no attempt to bar them from the meeting. In fact, most of the men on that list attended the meeting.

Q. Yes, but you said you weren't going out of your way to notify them. What did you mean by that?

A. I meant that we had not intended to telephone or get in touch with them regarding the meeting.

Q. As a matter of fact, did you telephone any of the men on the list?

A. I spoke to Mr. Bash. However, he telephoned me.

1024 Q. But you didn't call the names of any of those men on the special list?

A. It wasn't necessary because they all showed up before the other members had come.

Q. All of the eleven?

A. I am not sure whether all of the eleven where there. There was six——

Q. (Interrupting.) Wait a minute! You supposed it wasn't necessary. How could you determine that before this meeting appeared?

A. In other words——

Q. (Interrupting.) You were down in the phone booth calling these men, notifying them of the meeting, weren't you?

A. Yes.

Q. Did you, as a matter of fact, call any of the men on this list, which Mr. Jorgensen had mentioned, to notify them?

A. No.

By Mr. EDISES:

Q. You say that you telephoned these men from the lobby of the hotel?

A. I telephoned most of them from the lobby. I spoke to Mr. Bash from upstairs.

Q. And were you in a little telephone booth?

A. Yes.

Q. Well, was the door of the booth open or closed?

A. It was open.

Q. Where was Mr. Jorgensen at this time?

1025 A. I don't know. Mr. Jorgensen left us shortly after we started telephoning and he didn't come back until most of the men had assembled there. He was gone for perhaps an hour and a half.

Q. You say he left the hotel?

A. Yes.

Examination by Trial Examiner EICKHOFF:

Q. Were those nickel phones?

A. Yes.

Q. Did you plug your own nickel in?
A. Yes.
Q. Were you ever reimbursed for that?
A. No.

By Mr. Edises:

Q. How many men did you telephone?

A. I don't recall. I called everyone that could be reached with the exception of those names who were checked; and the men that I did reach by telephone were requested to bring their cars, if they had any, so that they could go out to the addresses which we had where there was no telephone. In that way the rest of the men were picked up.

Q. Did you telephone 35 men?
A. No; I didn't telephone that many myself.
Q. Twenty-five?
A. I don't recall how many I telephoned.

1026 Q. Was there more than 20?

A. No; I don't believe so. I believe I contacted about 18 men on the telephone, or I arranged to have them contacted, or to contact others who were known to have telephones. The first group that was called, I called one man and he accounted for five, including himself. I believe it was five.

Q. You contacted personally about 18?
A. About.
Q. How many of those were out of town, out of San Francisco?
A. Quite a few.
Q. About how many?
A. Perhaps—perhaps eight.
Q. And, would that be in the East Bay or Marin county?
A. Some of them were in the East Bay; some in Marin county.
Q. Any farther away than that?
A. No.

Q. About how long would you estimate that you talked to each of these men on the telephone?

A. Perhaps a half a minute; maybe a minute.
Q. You didn't take very long at all?
A. No.
Q. What did you tell these men?

A. I told them that we were having a meeting of the H. B. em-
ployees in the Bellevue Hotel; for them to get into their
1027 clothes as soon as possible and come over. We were going to take a vote on whether or not we were going back to work or stay out. Mr. Jorgensen was to be there to present the company's proposition.

Q. Did you tell them what time the meeting was set for?
A. There was no definite time.
Q. You told them to come over immediately?
A. As soon as possible.

Q. Did any of them say anything to you? Did they ask any questions?

A. Very few.

Q. Did any of them?

A. Some of them, yes. Mr. Martinelli wanted to know what it was all about. He explained his peculiar situation inasmuch as he was acting as attorney for the Local ARTA, and that he was really not a regular employee at the H. B. office. He said that he didn't like to attend. However, I urged him to attend and he did.

Q. Did any others say anything to you or ask you any questions?

A. Why, yes. There was one man who claimed he wasn't on strike; that he was sick. For that reason he didn't want to attend.

Q. Who was that?

A. That was Mr. Mulligan.

Q. He didn't attend?

1028 A. No.

Q. Do you remember any others asking you any questions about the meeting?

A. Yes; Mr. Wolverton.

Q. What did he say?

A. Well, he claimed that he was half asleep, and asked me to repeat what I had said over again before he finally got what it was all about. However, he attended the meeting.

Trial Examiner EICKHOFF. What were his questions?

The WITNESS. Well, I don't recall exactly what his questions were. "I don't get this," or words to that effect.

By Mr. EDISES:

Q. Did any of the men ask you why this meeting wasn't being held at the ARTA hall?

A. No. I explained to them it was not an ARTA meeting. It was an H. B. meeting only.

Q. Did any of them ask you why it wasn't an ARTA meeting?

A. No, not that I recall. Naturally, I couldn't recall everything that everyone said.

Q. Is it possible that some of them might have asked you why the ARTA wasn't in on it?

A. No.

Q. It isn't possible?

A. Oh, it is possible someone asked me that. It is possible, yes.

1029 Q. Can you at this time recall any particular man who asked you why ARTA wasn't in on it?

A. No.

Q. About how much time did you spend in telephoning?

A. Oh, I should say—I should judge about an hour and a half.

Q. What time did you finish telephoning?

A. I don't recollect exactly. It was around 2 a. m.

Q. Had Mr. Jorgensen returned to the hotel before you finished telephoning?

A. I believe he returned a few minutes afterwards.

Q. A few minutes afterwards?

A. Yes.

Q. Did you make any effort to phone any of the men at the ARTA hall?

A. No.

Q. Now then, what did you do when you had finished telephoning?

A. I didn't do much of anything, I just waited until the fellows got there.

Q. Did you go up to the room?

A. I was up there part of the time; downstairs part of the time.

Q. Who else was up with you at the room before the men arrived?

1030 A. No one. Mr. Burtz went out in his car with some of the other fellows. I remained at the hotel, so I could direct them up to the room.

Q. You stated that Mr. Jorgensen arrived a few minutes after you finished telephoning?

A. Yes.

Q. Didn't he go up to the room with you?

A. No; he arrived at the room afterwards. I believe he came in the room when I was present. That was my first visit to the room.

Q. So he came up to the room a few minutes after you finished telephoning?

A. Yes, as far as I can remember.

Q. Were you and he and Mr. Burtz alone there for a period of time?

A. No; before I finished telephoning a number of the fellows had come in to the lobby, and were present, and we all went up to the room together.

Q. What time did Mr. McLaughlin arrive?

A. I don't remember.

Q. When did you first speak to Mr. McLaughlin after you decided that you ought to get in touch with the company?

A. When?

Q. When?

A. At the meeting in the room.

1031 Q. You had phoned him, hadn't you?

A. I don't recall whether I phoned Mr. McLaughlin or whether one of the other fellows got in touch with him, or whether Mr. Burtz did. I don't recall whether I talked to Mr. McLaughlin on the telephone.

Q. Do you recall what you said to Mr. McLaughlin when you first saw him, when he came up to the room?

A. No; I don't.

Q. Did you not speak to him at all?

A. I undoubtedly did, but I don't recall what I said to him.

Q. Wasn't anything said about how the meeting was going to be conducted?

A. Not until all the members were there.

Q. Did you have any conversation with Mr. Jorgensen prior to the time the men arrived, as to how the meeting was to be conducted?

A. Yes.

Q. What was said?

A. I told Mr. Jorgensen that, inasmuch as he was invited there as a guest, merely to explain the company's stand, it would be better for him to explain the company's stand to the men, including the reading of the names of these men that I have mentioned; and then withdraw, and he agreed to that.

Q. What else was said?

A. I don't recall anything else that was said.

1032 Q. What was said about voting, for example?

A. I don't recall discussing the question of voting with Mr. Jorgensen.

Q. Was the union mentioned at all, in your conversation with Mr. Jorgensen?

A. No.

Q. At no time?

A. No.

Q. So that, from the time that you phoned him, around nine, until the time of the meeting, there was no mention, or no discussion, of the ARTA, is that correct?

A. Excepting that before the meeting was called to order, and before there was any formal meeting at all, Mr. Rathborne, of the ARTA, came in and he wanted to know if it would be all right for him to remain during the proceedings.

Q. What did you say to that?

A. I told him I didn't think so, inasmuch as we were not having an ARTA meeting in any sense of the word. It was merely an H. B. employees' meeting. I didn't consider it necessary or advisable to have any outsiders present.

Q. Did you consider him—why do you characterize him as an outsider? After all, he was a secretary of the union.

A. Yes; but he was not an employee of the H. B. office. That was strictly an H. B. employees' meeting.

Q. Did you likewise consider any other ARTA officials

1033 as outsiders?

A. Not if they were H. B. employees.

Q. You didn't consider Mr. Bash an outsider?

A. Not at all.

Q. Yet you didn't phone Mr. Bash?

A. No one phoned him.

Examination by Trial Examiner EICKHOFF:

Q. Was anybody in on these plans except Mr. Jorgensen?

A. Mr. Burtz.

Q. Just the three of you?

A. Yes.

Q. In discussing this meeting with Mr. Jorgensen, he didn't mention the union angle at all?

A. No.

Q. He made no inquiry about the union angle?

A. No, we didn't consider the union angle of it at all. The only thing we were considering was the question of whether the men at the H. B. office wanted to go back to work or not; and we were to abide by their decision at that meeting. We already knew that the New York men had gone back to work.

Q. The two of you were the only ones concerned in the calling of this meeting, plus Mr. Burtz?

A. Right.

By Mr. EDISES:

1034 Q. Did you have any discussion with Mr. Jorgensen as to whether or not you ought to ask the Lobitos or Palo Alto men in on it?

A. No; I don't believe that came up.

Q. Are you quite positive?

A. After we had decided it was to be an H. B. meeting.

Q. Just exactly what was said? As closely as you can recall of the time you have just mentioned? That is, namely, when you decided that it was to be an H. B. meeting. Relate the conversation as closely as you can remember.

A. To tell you the truth, I don't remember any conversation about it.

Q. Well, was it just assumed that it was to be an H. B. meeting? Didn't you mention it at all?

A. That was the natural assumption.

Q. Why?

A. I had no authority to call an ARTA meeting. Mr. Jorgensen had no authority to attend one. However, he was our boss at H. B. and I was an H. B. employee. The meeting had no connection with the ARTA hall. It was to decide whether we should go back to work, regardless of ARTA, and any other considerations.

Q. Did it occur to you at the time Mr. Jorgensen checked these names on the list that it might have been checked for any reason in connection with their union activities?

Mr. MERRICK. I object to that question.

1035 Trial Examiner EICKHOFF. You object, Mr. Merrick?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. You have mentioned, the early part of your testimony, Mr. Hatch—you made a distinction between these men and the union leaders? Am I right?

A. Yes.

Q. Do you—may I ask what the basis for the purpose of distinction is, or was?

A. Well, as I understood it—the ARTA set-up—there was really only one official leader, that is the point to point group. He was a point to point delegate. I refer to Mr. Salisbury. The only other official leader in San Francisco was Mr. Rathborne, the secretary.

Q. How about Mr. Bash?

A. Well, Mr. Bash was acting as local chairman.

Q. And you stated he was one of the persons whose leadership you opposed?

A. Yes. No, I didn't oppose his leadership. I opposed some of his actions.

Q. Oh, I see.

A. I had no objection to his leadership.

Q. Did you—what actions of his are you referring to that you objected to?

A. The only action that I objected to—one of the main
1036 things that led to my calling the H. B. meeting—was the fact that when I informed him that the New York men had gone back to work, he advised me not to say anything about it among the rest of the men; and he made the statement that even if all the whole company went back to work, so long as we remained out, we stood a chance of winning the strike—which appeared to me to be ridiculous.

Q. Did he state any reason for not wanting you to inform the rest of the men?

A. He stated in telling me not to inform them, he said, "Why start a lot of wild ideas?" or words to that effect. I don't recall exactly what he said.

Q. His conversation was referring to the telegram that you received, is that correct?

A. No. That conversation was referring to my notice to him that I had received word that the men had gone back to work. I told him that Sunday morning.

Q. Oh, I see. What was the basis of your information? Where did you get it?

A. I received that information from Mr. Fred Dewey.

Q. Mr. Dewey; is he the city manager?

A. Yes.

Q. How did you happen to receive this information from Mr. Dewey?

1037 A. He volunteered that information. I happened to meet him at Foster's restaurant. He volunteered that information.

Q. What else was said at this conversation?

A. Nothing that I can recall.

Q. Is that all? He just gave you the information?

A. Yes.

Q. And was that the sole basis of your knowledge of what was going on in New York?

A. That was not. That was afterwards confirmed.

Q. Under what circumstances?

A. I have a short wave receiving set out at my house in which I covered the Mackay system during the strike.

Sunday night around 10 p. m. I heard Mr. Jorgensen in a personal conversation with Mr. Scribner. The two circuits are only a few kilocycles apart.

I heard both sides of the conversation.

1038 Q. What was that conversation?

A. Mr. Scribner told Mr. Jorgensen that he had a full staff there. That convinced me that Mr. Dewey told the truth.

Q. Did you go into detail with Mr. Bash as to the sources of your information?

A. I told him where I heard it. I told him Mr. Dewey told me.

Q. What was that?

The WITNESS. When?

Q. You didn't tell him you had listened in circuits?

A. No; that was afterwards confirmed by Mr. Scribner Sunday night over the circuit.

Q. At the time you spoke to Mr. Bash the sole source was this breakfast conversation with Mr. Dewey, is that right?

A. Yes.

Q. Did you subsequently—you mentioned a telegram as having been received from Mr. Salisbury, did you not?

A. Yes; that was on Monday night.

Q. That was received at that time?

A. The following night. However, the telegram had been filed apparently prior to the telephone conversation.

Q. Have you now stated the entire grounds of your hostility to Mr. Bash?

1039 Mr. MERRICK. I object to this characterization as to his attitude.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Have you now stated all the grounds as to why you distrusted the leadership of Mr. Bash?

Trial Examiner EICKHOFF. He did not say he distrusted the leadership. He objected to some of the things that Mr. Bash did.

By Mr. EDISES:

Q. Have you now stated all of the grounds as to why you objected to Mr. Bash's actions?

A. Yes; I believe that is the essential reason why I didn't go to Mr. Bash for further dealing with the company here because he proved to me by his attitude that that is not the course he would be willing to pursue.

Q. In answer to a question this morning didn't you state that you had no contact, no further contact with the officials between Saturday, 3:15 a. m., and Monday night?

A. I believe that I stated that I had met Mr. Rodman on—Mr. Rodman and Mr. Dewey on the street Sunday night.

Q. Now, you have recalled a further occasion when you had contact with company officials?

A. Yes; Mr. Dewey.

Q. Can you recall any further occasions when you had contact with company officials prior to Monday night?

A. No.

Q. Were your objections to Mr. Salisbury of a personal
1040 nature?

A. Not at all.

Mr. MERRICK. He hasn't testified to any objections to Mr. Salisbury.

Mr. EDISES. He testified that he disapproved of Mr. Salisbury. He has mentioned Mr. Salisbury was one of the leaders of the union of whom he disapproved.

Trial Examiner EICKHOFF. Is that your testimony?

The WITNESS. I didn't say I disapproved of Mr. Salisbury. I said I disapproved of the action of the leaders, including Mr. Salisbury and Mr. Bash.

By Mr. EDISES:

Q. What particular actions of Mr. Salisbury did you disapprove of?

A. The only disapproval I have of Mr. Salisbury's actions is the fact that he did not obtain full information as to what was happening here before officially declaring a strike in fact.

Q. How do you know—how do you know that he didn't obtain full information of what was occurring here?

A. I am afraid I am overreaching myself in that reply. I was thinking of my attitude now, rather than then.

Q. Now at that time, you didn't object to Mr. Salisbury at all?

A. No.

Q. You did, however, object to Mr. Bash?

1041 A. Not until after Sunday morning when he refused to consider the information that I gave him as being of any importance.

Q. As you have previously testified?

A. Yes.

Q. But you didn't object to Mr. Salisbury at all?

A. Not at all.

Q. Had no fault to find with any action of Mr. Salisbury at that time?

A. No; I had no fault.

Q. Have you stated—you stated that you objected to the union officials, and that that was the reason, or, rather, you objected to certain actions of the union officials?

A. Yes.

Q. And that was the reason why you thought it would be advisable for you to get in touch with the company and see about calling the strike off?

A. Yes.

Q. Were there any further actions of union officials that you objected to, other than those that you testified to?

Mr. MERRICK. I don't want to delay the hearing, but is this really relevant, material testimony?

Trial Examiner EICKHOFF. I don't know.

Mr. MERRICK. I object to it on the ground it is not
1042 apparent that it is relevant or material.

Mr. EDISES. I submit that it is material—that it is perfectly relevant. He has given certain reasons why he tried to get in touch with the company. He said that the reason, the paramount reason was that he objected to certain actions of the union officials. Now I want to know what those actions were.

Trial Examiner EICKHOFF. As I recall the witness' testimony, he said in the first place he thought that there should have been a referendum on the strike.

(Trial Examiner Eickhoff turns to witness.)

You correct me if I am wrong.

The WITNESS. Yes.

Trial Examiner EICKHOFF. (Continuing.) Later on, he thought it was a lost cause and that they had better be getting back to work.

His objections to the actions of the officials were in failing to put this information before the men.

Mr. EDISES. Yes; but he presented this objection to the actions of the officials as his reason for not having brought about this return to work through ARTA. In other words, the reason he didn't bring it about through ARTA was because he objected to the officials.

Now I want to know what his objections are.

1043 Mr. MERRICK. He said he thought they couldn't accomplish it through ARTA.

Trial Examiner EICKHOFF. Tell us again why you did not proceed through ARTA.

The WITNESS. Upon the telephone conversation with Mr. Loudermilk, Rathborne, and Salisbury, I gained the impression that ARTA was not going to negotiate directly with the company; that they were trying to take up the matter through the Government Arbitration Board, and that the time was ripe, and overdue, for some direct contact with the company; and I was convinced that the ARTA officials—Mr. Bash, Mr. Salisbury—had practically closed the door for any further direct negotiations with the company.

By Mr. EDISES:

Q. And the sole basis of your inference was the telephone conversation that you heard Mr. Loudermilk hold with New York?

A. That was one of the main reasons, yes. The other reason was my conversation with Mr. Bash regarding the situation in New York, which was that New York had gone back to work. He didn't want that information to become known among the members in general.

Q. Those are the sole reasons why you have left ARTA out of the picture when you started to get the men back to work?

A. No, those are not the sole reasons.

Q. What other reasons were there?

A. Some of the reasons are pretty hard to define. It was a
1044 feeling that I had—probably without any real physical basis—that ARTA, the leaders did not want to stop the strike.

Q. Now, you said——

Mr. MERRICK. (Interrupting.) I submit he ought to be allowed to complete his answer.

The WITNESS. I felt that the ARTA was willing to pursue the strike——

Mr. EDISES. I am sorry.

The WITNESS. (Continuing.) To a point where harm is done both to themselves and the men for purposes of a strike.

By Mr. EDISES:

Q. Now, are you through with your statements?

A. Yes.

Q. Now, you stated that you had the feeling, probably without any real physical basis for it—is that your testimony?

Mr. MERRICK. I submit this is not direct examination. This is cross examination.

Trial Examiner EICKHOFF. Do you mean there was a mere suspicion?

The WITNESS. Something stronger than a suspicion.

Trial Examiner EICKHOFF. But you don't know what the grounds are.

The WITNESS. One thing I know: Prior to the telephone
1045 conversation with Mr. Loudermilk and Mr. Salisbury, that was Mr. Salisbury's intention, because the telegram which came afterwards, and which was apparently filed before the telephone conversation, gave the names of those men who were flying out to the west coast—said they were all ex-ARTA members and to stop them; which indicated to me that the strike was to be carried on vigorously.

By Mr. EDISES:

Q. When did you first feel this—have this feeling about the ARTA officials?

A. Right after the strike was declared.

Q. Right after the strike was declared?
A. Yes.
Q. At about 3:15 a. m.?
A. Yes. I felt at that time the men had not been given a chance to voice their opinions, that the ARTA leaders were taking matters into their own hands in violation of the constitution of the organization.
Q. That was at 3:15 a. m., the morning of October 5?
A. Yes.
Q. When you testified that Mr. Jorgensen telephoned you?
A. Yes.

Examination by Trial Examiner EICKHOFF:

Q. Do you feel that the leaders or delegates had exceeded their authority?
A. I certainly do.
1046 Q. Do you know of any resolution of the union authorizing them to do what they did?
A. No; I know of none giving them any such wide latitude as that.
Q. Well, do you know any resolution giving them substantially the same authority, or any authority in that respect?
A. Not the authority to call a strike; no.

By Mr. EDISES:

Q. Mr. Hatch, were you present at a meeting of the ARTA on August 20, 1935?
A. I don't remember, but I think not.
Trial Examiner EICKHOFF. I think we will have to stop now.
Now it is going to be impossible for me to be present tomorrow morning, and Mr. Wagenet tells me that it would be inconvenient for him to be here before 2:15 tomorrow; so unless there is some other suggestion, we will reconvene at 2:15 tomorrow afternoon.
This session is adjourned now.
(Thereupon, at 4:17 o'clock p. m., the hearing in the above entitled cause was adjourned until 2:15 o'clock p. m., Wednesday, December 11, 1935.)

1047 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Wednesday, December 11, 1935.

Met pursuant to adjournment at 2:15 o'clock p. m. Present: Same as before.

PROCEEDINGS

ROBERT IRVIN HATCH, the witness on the stand at the time of adjournment resumed the stand and testified further as follows:
Trial Examiner EICKHOFF. You gentlemen are ready to proceed?
Mr. EDISES. Yes.

Trial Examiner EICKHOFF. Do you want Mr. Hatch?

Mr. EDISES. Mr. Hatch, yes.

1048 Mr. EDISES. Mr. Hatch, yes.

By Mr. EDISES:

Q. You testified yesterday that you were on your way to see Mr. Loudermilk, and Mr. Rone when you accidentally bumped into Mr. Rodman and subsequently Mr. Dewey, is that correct?

A. That is right.

Q. What were you going to see Mr. Loudermilk and Mr. Rone about?

A. They had received information that these men from Los Angeles were staying at a hotel on Geary street—I think it was the Stewart on Geary and Powell—yes.

Q. When you say "these men" you refer to whom?

A. Several men who were up here from Los Angeles from the Mackay office in Los Angeles.

Q. Strike breakers?

A. I don't know whether they were strike breakers or not. They were up here.

Q. For what purpose?

A. I beg your pardon?

Q. For what purpose?

A. I don't know; I had no exact information about the reason why they were here.

Q. Were they coming to take the place of the men who were on strike?

A. That, I do not know. I mean to say, I had no definite
1049 information. I assume that was why they were there. I was going to see Mr. Loudermilk and Rone to identify the group.

Q. For what purpose?

A. Discussing the matter with them; if they were here as strike breakers, to find out if they considered to go back to Los Angeles.

Q. You wanted to persuade them in going back to Los Angeles?

A. My primary purpose was to identify the group. Neither Mr. Loudermilk or Mr. Rone knew exactly who was in the group.

Q. Mr. Loudermilk and Mr. Rone were to persuade them if possible to return to Los Angeles, and you were to assist them in identifying them?

A. That is right; that is right.

Q. Did you see them?

A. Yes; I met the group on the street.

Q. Did you see Mr. — What was said when you met this group?

A. I don't recall exactly what was said.

Q. As closely as you can recall?

Trial Examiner EICKHOFF. What did you talk about?

The WITNESS. We discussed the strike situation.

By Mr. EDISES:

Q. Mr. Dewey was present when you discussed it?

A. Oh, yes; oh, yes. I believe I said, "Well, we are all regular men; we are all entitled to our opinions."

1050 I said "I am on one side, and apparently you are on the other."

Q. And when you said you "were on one side" you meant you were on the side of the strikers?

A. Yes.

Q. Anything further said?

A. Yes. After Mr. Dewey and the others walked on, he remained behind.

Q. Oh, yes; what was said then?

A. He told me we were all going back—that is, they were all going back, giving me the assurance they were going back to Los Angeles.

Q. What did you say to that?

A. I said "That is fine."

Q. You believed that was true?

A. Yes.

Q. Mr. Loudermilk was the presiding officer, was he, at the meeting of the morning of Monday, October 7, that you referred to yesterday?

A. Monday, October 7.

Q. Yes; I believe it was Monday, October 7, that you referred to—said you were present at the meeting. You said you came into it a bit late?

A. At the ARTA hall?

Q. Yes; at the ARTA hall.

1051 A. In the morning, you mean?

Q. Yes; in the morning.

A. I don't recall whether Mr. Bash presided or Mr. Loudermilk had the floor, or whether Mr. Loudermilk was actually presiding. I know he had considerable to say.

Q. He took a very prominent part in that meeting?

A. Yes.

Q. Do you know of any other activities of Mr. Loudermilk and Mr. Rone, that they were engaged in during the strike besides what you have mentioned?

Mr. MERRICK. I object to this testimony.

Trial Examiner EICKHOFF. Is this particularly pertinent?

Mr. EDISES. I think it is, Mr. Examiner.

Mr. MERRICK. My only objection is as to its relevancy, materiality.

Mr. EDISES. With your indulgence, Mr. Examiner, I would like to see this a bit further.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Do you know of any other activities of Mr. Loudermilk, and Mr. Rone during the strike?

A. No; I don't.

Q. Perhaps we may get at it this way, if I may be permitted. Mr. Loudermilk was quite active during the strike—the entire strike?

A. Well, he had quite a bit to say, if that is what you——

1052 Q. Can you think of anyone who was more active than Mr. Loudermilk during the strike?

A. I don't know exactly what you mean by "active."

Q. Took part in their activities, presiding at meetings, talking a great deal at meetings, committees, such as you have just referred to, to interview men from Los Angeles—and things of that type. Generally active during the strike?

A. Yes; he was quite active.

Q. Mr. Loudermilk was quite active?

A. Yes.

Q. Mr. Rone was likewise quite active, is that correct?

A. Yes.

Mr. MERRICK. Stipulated—I will stipulate that, if you like.

Mr. EDISES. Thank you.

By Mr. EDISES:

Q. Do you know whether Mr. Rone was a strike captain?

Mr. MERRICK. I submit, Mr. Examiner, I can't see any possible reason in going over this.

A. Yes; I believe he was a captain in charge of the pickets right ahead of mine.

By Mr. EDISES:

Q. So, you would say Mr. Loudermilk and Mr. Rone were among the leaders in the strike?

Mr. MERRICK. I again object. I ask the Examiner to rule if
1053 he thinks this line of questioning is adding anything to the case, or if this last question is proper direct examination.

Trial Examiner EICKHOFF. I don't know.

Mr. MERRICK. The attorney should state what the purpose is in this line.

Trial Examiner EICKHOFF. Do you care to state where you are leading, or will that show your hand?

Mr. EDISES. If the witness is able to characterize them as leaders, I would like to have his statement; then, I will cease this particular line of questioning.

Trial Examiner EICKHOFF. I will permit that.

Mr. MERRICK. I don't particularly care, but that doesn't prove anything this witness has said.

Mr. EDISES. Surely; I appreciate that.

Mr. MERRICK. I will stipulate that on these two points.

Mr. EDISES. May that be stipulated, then, to the knowledge of Mr. Hatch?

Mr. MERRICK. So far as he knows anything about it, they were active leaders of the strike.

By Mr. EDISES:

Q. They were active leaders in the strike, referring to Mr. Rone and Mr. Loudermilk?

A. I beg your pardon. I didn't understand they were leaders of the strike; I knew they were active, but they didn't have any special privilege for being so. They just took it on their own shoulders to be active.

1054 Q. Nevertheless they were. Do you know anyone who was more active than Loudermilk and Rone?

Mr. MERRICK. Is this to prove a fact, or show the witness' mind; and if so, what makes the state of this witness' mind material?

Trial Examiner EICKHOFF. I don't know, but I am going to be indulgent. I will allow the question.

By Mr. EDISES:

Q. Do you know of any one who was more active than Mr. Loudermilk and Mr. Rone in the strike?

A. No; I can't say that I do.

Q. Going back for a moment to the——

Mr. MERRICK. (Interrupting.) I move to strike this testimony in the record as being utterly immaterial and irrelevant.

Mr. EDISES. I believe the relevancy will appear, Mr. Merrick.

Trial Examiner EICKHOFF. Denied.

By Mr. EDISES:

Q. Going back a moment to the phone calls, that you made early in the morning of Tuesday, October 8, or late evening of Monday, October 7—did you know the price of a phone call to Marin county? How much did you pay for your calls to Marin county and the east bay, per call?

A. I believe the calls across to the east bay are ten cents.

Q. And to Marin?

1055 A. I don't recall.

Mr. MERRICK. I'd like to ask the Examiner whether he is seeking information or is this to test the witness' recollection?

Mr. EDISES. I want to know what he paid for these calls.

Mr. MERRICK. Is this a material fact, how much he paid for them? It sounds to me very much like cross-examination, Mr. Examiner.

Trial Examiner EICKHOFF. Well, it may be.

Mr. MERRICK. I object to it on that basis.

Trial Examiner EICKHOFF. Do you consider this as cross-examination?

Mr. EDISES. No; I don't.

Mr. MERRICK. What is the purpose of it? If you want to know the rate, you can look it up in the book. That is the best evidence.

Mr. EDISES. I don't want to know the rate. I want to know what this witness paid out of his own pocket in making phone calls.

The WITNESS. I can give you this directly.

By Mr. EDISES:

Q. Yes; how much did you spend altogether for phone calls?

A. It cost me out of my own pocket about 50 cents.

Q. And you were reimbursed for the balance?

A. Yes.

1056 Q. By whom?

A. I don't know who reimbursed me. About a week after the strike Mr. Jorgensen asked me, "Say, how much did you put out for those phone calls?"

I recall that Mr. Wolverton had paid 50 cents out of his own pocket for phone calls, and I figured that Mr. Burtz had spent perhaps a dollar out of his pocket. So I said a dollar and a half; so I received the money and I gave Mr. Burtz a dollar and I gave Mr. Wolverton 50 cents. Actually, I was out 50 cents on the deal.

Q. About what day, to the best of your recollection, was it that Mr. Jorgensen paid you that $1.50?

A. About a week after the strike, I should judge.

Q. You had returned to work at that time?

A. Oh, yes.

Examination by Trial Examiner EICKHOFF:

Q. Did he say whether that was out of his pocket?

A. No.

Q. Did you ask him?

A. No; I imagine it came out of the petty cash account.

Q. There was no discussion between you about who was putting up the money that Mr. Jorgensen gave you?

A. No.

Q. You didn't question him?

1057 A. No.

By Mr. EDISES:

Q. What else was said at that time—at the time he reimbursed you?

A. Nothing that I recall.

Q. Nothing at all?

A. No.

Q. You testified you didn't phone any of the persons who were on the list that Mr. Jorgensen checked off for you, but that nevertheless one of them—Mr. Bash—phoned you, is that correct?

A. He telephoned Mr. Burtz, first.

Q. Yes; and he——

A. (Interrupting.) When Mr. Burtz and I were telephoning from the lobby, he telephoned, and Mr. Burtz answered the telephone. Mr. Burtz told me he explained to Mr. Bash what was happening at the meeting, the object of the meeting, and so forth. I was busy on the other phone at the time Mr. Bash asked for me, so I told Mr. Burtz to go ahead and talk to Bash. But Bash later called me afterwards, 20 minutes later.

Q. Dealing first with the conversation with Mr. Burtz, do you remember what you and Mr. Burtz said to each other, regarding Mr. Bash's phone call—the exact words?

A. No.

Q. He called you back later?

A. Yes.

1058 Q. Exactly what was said, or as closely as you can remember, tell us exactly what was said in that conversation.

A. When I was speaking to Mr. Bash——

Mr. EDISES. Yes.

Mr. MERRICK. Hasn't this already been testified to?

Mr. EDISES. No, he simply testified he spoke to Mr. Bash.

The WITNESS. As I recall it, I told Mr. Bash the fellows were there at a meeting to take a vote whether they wanted to go back to work or remain out under the conditions that were outlined by Mr. Jorgensen. As I recall it, Mr. Bash—"Well, that simply slays me! I thought I was doing what the fellows wanted me to do."

By Mr. EDISES:

Q. Yes; what else was said?

A. I said "Where are you?"

I think he said has was at Sam York's house, so I asked him to put Mr. York on the telephone.

Q. Did you have any further conversation with Mr. Bash before he put Mr. York on the telephone? Do you know whether anything was said in regard to whether Mr. Bash would be permitted to come to the meeting?

A. No, I don't.

Q. Do you remember whether anything was said as to whether or not Mr. Bash would have a vote at the meeting?

A. No.

1059 Q. Are you quite sure?

Mr. MERRICK. I object——

The WITNESS. I——

Mr. MERRICK. (Interrupting.) Don't answer after I have objected, until the Examiner rules.

Trial Examiner EICKHOFF. I think the witness' memory could be stimulated a little bit. I will overrule the objection.

By Mr. EDISES:

Q. Mr. Hatch, are you positive nothing was said about Mr. Bash coming to the meeting, or that he would be able to vote in the event he did come?

A. I am not positive.

Q. Something may have been said?

A. Yes; something may have been said.

Mr. MERRICK. I would like to observe at this time it is apparent that Mr. Edises has not consulted with his witness before calling him. He is consuming quite unnecessary time. He had plenty of time to go over this with the witness.

Mr. EDISES. Isn't it possible that there might be some argument as to whose witness this gentleman is?

Mr. MERRICK. The argument is just as much one way as the other.

By Mr. EDISES:

Q. Will you please try to recall exactly as you are able, just what was said on the subject?

Mr. MERRICK. I again object to this as cross examination.

1060 Trial Examiner EICKHOFF. Oh, I think it is repetition of his earlier questions; and the witness is obviously a little bit puzzled as to whether he remembers or not what he did remember.

A. I don't remember what was said aside from what I have already told.

By Mr. EDISES:

Q. Do you remember having stated——

Mr. MERRICK. (Interrupting.) I object to this as leading.

Trial Examiner EICKHOFF. If you can show an earlier inconsistent statement, I will permit it, if you name the time and circumstances and the statement.

The WITNESS. If you will permit me to state what I said to Mr. York when he came to the telephone, it might clarify it.

Mr. EDISES. Surely, go ahead.

The WITNESS. I told Mr. York—Oh, I beg your pardon. I do remember now that Mr. Bash stated that he was unable to come over; he was unable to get away, that was it.

By Mr. EDISES:

Q. You had asked him to come over?

A. Apparently I had; I don't remember. I don't remember—I do remember replying that he was in such a position that he was unable to attend the meeting.

Q. Now, Mr. Hatch, you stated previously——

Mr. MERRICK. (Interrupting.) I object to this question.

1061 Trial Examiner EICKHOFF. On what grounds?

Mr. MERRICK. Cross examination, Mr. Examiner. He is calling his attention to his previous testimony.

Trial Examiner EICKHOFF. If his previous testimony is inconsistent, he may do that.

By Mr. EDISES:

Q. Don't you recall saying, in your earlier testimony, Mr. Hatch, that you didn't ask any of the eleven to come to the meeting?

A. I don't believe I said that. I said we did not go out of our way to do that. We made no special effort.

Q. Will you define what you mean by "out of your way"?

Mr. MERRICK. He asked that yesterday.

A. Yesterday afternoon I was pretty tired toward the end of the examination, and I sort of fell asleep at the switch on some of those last questions.

By Mr. EDISES:

Q. In other words, you weren't on guard?

A. That is it. If you don't mind I would like to have the reporter read the last three or four questions that were asked me yesterday.

Trial Examiner EICKHOFF. I don't think that is necessary. Just rely on your recollection at this time.

Mr. MERRICK. Is this in connection with what you are just now being questioned about?

The WITNESS. No; I was just interrupting the testimony, if I may be permitted.

1062 One question was asked me regarding my telephone conversation with Mr. Jorgensen, my reasons for feeling that the ARTA leadership had let us down, or something to that effect; and as I recall it the question was that my feeling was based entirely upon that conversation with Mr. Jorgensen.

My reply to that question was, "Yes, it was."

Well, I didn't intend to convey that impression at all.

By Mr. EDISES:

Q. You now wish to change your testimony in that regard?

A. Providing my testimony reads unqualifiedly; "Yes."

Q. Have you spoken to Mr. Merrick?

A. Mr. Merrick called my attention to this today. I gave an unqualified "Yes" to a question which should have been explained a little more fully.

Q. What changes do you wish to make in your testimony?

A. When I replied "Yes" yesterday to that question, what I mean is, that when Mr. Jorgensen advised me that the men had gone out on strike, that my confidence in the ARTA leaders immediately——

Trial Examiner EICKHOFF (interrupting). Do you wish to change any of your testimony?

The WITNESS (continuing). Dropped considerably, because it was my impression—in fact, I knew it to be the case—that after all meetings of the local ARTA, if any important question came up,

1063 and all of the members were not in attendance, that those members who were not there were to be given 48 hours in which to be notified.

If all of the membership was not aware of what happened at a meeting, they were not to take any action until after the expiration of 48 hours, so that this strike which was declared—the men went out at midnight, I hadn't been notified until Mr. Jorgensen had telephoned and immediately it occurred to me that perhaps other members had not been notified; and for that reason any confidence in the leadership was shaken.

By Mr. EDISES:

Q. Immediately?

A. That was one of the reasons I had lost confidence in the leadership.

Q. Yes; you had discussed this fully with your counsel, Mr. Merrick?

Mr. MERRICK. I submit that that classification is improper.

By Mr. EDISES:

Q. You have discussed this?

A. No, he said I replied "Yes" to a question that required further consideration.

Examination by Trial Examiner EICKHOFF:

Q. How did he know it required qualification?

A. Well, he gave the impression that the answer "Yes" I gave would make it appear, from the reading of that record—
1064 that question and that answer, without taking into consideration other questions and answers. That was my sole reason in losing confidence in the leadership from that conversation which was untrue.

Q. Did he know you had other reasons?

A. Well, I previously testified other reasons.

By Mr. EDISES:

Q. Mr. Hatch, are you prepared to state at this time that there was no connection whatever between your lack of confidence in the leaders of ARTA and what Mr. Jorgensen told you over the telephone?

Mr. MERRICK. He has just said that was one of the——

A. (Interrupting.) I didn't know about it. There was no other reason—that is, no reason in connection with that conversation.

By Mr. EDISES:

Q. Were you ever present at a meeting in which the men set a dead line at which time the company would have to comply with their demands?

A. There was a dead line on the negotiations in the form of a resolution.

Q. What was that dead line?

A. I don't remember. It was supposed to be on a Friday, I believe. I think it was the previous Friday—the previous Friday to the strike.

Q. And that dead line meant that if they didn't sign an
1065 agreement—a satisfactory agreement by that time—well, what was to be done?

A. A referendum vote was to be taken among the entire membership affected.

Q. Was that at a meeting when it was decided that a referendum vote was to be taken in the event the company didn't sign at that time—at the time of the dead line?

A. Yes, in the July meeting when the so-called strike vote was taken, it was explained that that was merely a straw vote. It would have no bearing on the final attitude of the membership in regard to the strike.

Q. How about the meeting at the September 13—on September 13? Was there a dead line set then?

A. September 13?

Q. Yes.

A. I don't remember attending that meeting.

Q. If there had been a dead line set at that time, September 13, that would have meant for purposes of striking, would it not?

Mr. MERRICK. He has already testified that the dead line——

Mr. EDISES (interrupting). Just a minute! You are not testifying.

Mr. MERRICK. Well, you are supposed to be asking questions on direct examination. I object to your characterization.

Trial Examiner EICKHOFF. I must confess that the testi-
1066 mony of the witness is such as to permit a little leading at this time.

Mr. MERRICK. I haven't any objection to the leading.

By Mr. EDISES:

Q. Will you answer my last question?

A. Yes.

Q. If there had been a dead line after September 13—I presume now, as you have testified, you are over the straw vote—what would that dead line mean?

A. The same thing that a referendum vote would have to be taken among the membership to find out whether they wanted to walk out.

Q. Were you present at a meeting where it was agreed among the membership that after the dead line there was to be a referendum vote taken?

A. I was given every assurance by Mr. Salisbury, and all of the other leaders in the union, that no strike would be taken—that is, no strike action would be taken unless the thing were referred to the membership as a whole.

The whole ARTA idea was but a rank and file organization; that important matters were to be decided by the rank and file. The extreme distinction was the fact that it was a rank and file organization, where the final word was to be given by the membership as a whole.

Examination by Trial Examiner EICKHOFF:

1067 Do you know whether or not the rank and file authorized the calling of a strike?

A. I know positively that they did not.

Q. You know that they did not?

A. I know positively that they did not.

Q. Were you present at the meeting September 13?

A. I don't remember.

Q. Then you don't know what proceedings were at that meeting?

A. I know that if I were not present at a meeting and a strike vote were not taken, I was not given an opportunity to vote.

By Mr. EDISES:

Q. In other words, you considered yourself a member of the rank and file?

A. Absolutely.

Q. You approve of the rank and file tactics of the ARTA?

A. I certainly do. I approve of that principle, but I believe that that principle was violated in the conduct of that strike.

Q. You believe when a decision is made, every member of the rank and file ought to be present and express himself?

Mr. MERRICK. I object—cross examination.

Trial Examiner EICKHOFF. I will allow it.

A. I believe that when it comes to an important decision, such as a strike vote, that a regular ballot should be taken among the
1068 entire membership to find out whether the entire membership was in favor of that strike—I beg your pardon, the entire membership of those affected by that strike.

Q. The point to point division of ARTA?

A. The Mackay Radio point to point division.

J. You have not mentioned the union all along. You are not leaving the union out of the picture, is that the idea?

A. No.

Q. Do you still approve of that policy of ARTA, do you?

A. Of the rank and file policy?

Q. Of permitting the rank and file to express themselves on important points?

A. Right.

Q. And in following the procedure that is provided by ARTA for that purpose?

A. Well, I am not acquainted with the procedure provided by ARTA, excepting what I had been told when I joined the union—namely, that the constitution provided for a vote.

Q. Apart from that hearsay, you are not familiar with the procedure of ARTA, is that correct?

A. I was familiar with it to the extent that I had been familiar with it at the meetings,

Q. Yes. Now, you don't remember whether you were present at that September 13 meeting?

Mr. MERRICK. I object to this—cross examination.

Trial Examiner EICKHOFF. Overruled.

1069 Mr. MERRICK. Is the Examiner now ready to state that this witness is hostile, or what basis do you permit cross examination?

Trial Examiner EICKHOFF. I permit it in the interests of getting at the bottom of the situation.

Mr. MERRICK. I think it is perfectly obvious that these questions aren't addressed to this witness to solicit information as to what took place, or whether he was there or not. He is simply trying to attack his credibility, and I think that is very obvious; and as such, I object

to it unless the Examiner is prepared to state some reason why this attorney should be permitted to cross examine his own witness.

Trial Examiner EICKHOFF. It is largely discretionary whether the Examiner—whether he will permit leading questions on the cross examination.

Mr. MERRICK. I am not objecting to it as leading.

Trial Examiner EICKHOFF. You are objecting to it as cross examination?

Mr. MERRICK. Absolutely. He has said several times he can't remember whether or not he was there or not. He certainly is not trying to find out whether he was there when he continually presses the question.

Trial Examiner EICKHOFF. I will allow the cross examination.

Mr. Reporter, read the last question.

1070 (The question referred to was read aloud by the reporter as above recorded.)

A. That is right.

Examination by Trial Examiner EICKHOFF:

Q. May I interpose a few questions here?

In connection with the strike, are you objecting to the constitution and by-laws of the organization, or the action taken by the men who are their leaders; or just what is it?

A. I was objecting to the action of the leaders in calling the strike without putting the whole matter—without a referendum vote.

Q. You claim they did that without authorization?

A. Yes.

By Mr. EDISES:

Q. Did you answer my question as to whether or not——

A. Yes; I said "I don't remember."

Q. Consequently if, at this meeting there was a discussion of a referendum vote, you would not know anything about it?

Mr. MERRICK. I object to this as cross examination and on the grounds it is immaterial and irrelevant.

Mr. EDISES. In fact, everything.

Mr. MERRICK. Quite right.

Trial Examiner EICKHOFF. Overruled; but I think you could reframe the question a little better.

1071 By Mr. EDISES:

Q. Well, I will reframe that question.

Trial Examiner EICKHOFF. Do you know what happened at that meeting September 13th, if there was one?

The WITNESS. Maybe if my memory were refreshed a little but by minutes of the meeting, I might remember it. I can't connect it with any particular event that happened at that date.

Mr. EDISES. Yes; I think we can refresh your memory.

The WITNESS. I might have been present, for all I know.

By Mr. EDISES:

Q. One further question, Mr. Hatch: Are you familiar with the procedure of submission of minutes of the meetings to the various men—members of the ARTA, who were not present at the meeting?

A. No, I have never seen the minutes and I missed several of the meetings.

Q. Were you at any time given an opportunity to indicate whether or not you approved or disapproved of the action that was taken at a meeting when you weren't present yourself?

A. I knew there was supposed to be something like that in effect.

Q. But you yourself were never given an opportunity to express your approval or disapproval of any ARTA meeting, is that correct?

A. I wouldn't say I was never given an opportunity. I believe I was given some memorandums that were passed around throughout the office.

1072 Q. But in regard to any meeting at which there was discussion of a dead line, you were not given an opportunity to express your approval or disapproval as to that meeting, is that correct?

A. I don't remember.

Q. You don't remember whether you were given that opportunity?

A. I remember a dead line being set, but I do not remember whether I was given an opportunity to express my opinion, or whether I voted for or against it.

Q. Were you interested in what went on at the ARTA meetings?

A. Certainly; they certainly affected me.

Q. Consequently, if anyone handed you a copy of the minutes and asked you to sign or approve or disapprove, I believe, you would read the minutes, wouldn't you?

A. If they were not too lengthy.

Q. What do you mean by "too lengthy"?

Mr. MERRICK. I object to this. This is certainly cross-examination and wholly irrelevant.

Trial Examiner EICKHOFF. I am going to permit it, Mr. Merrick.

By Mr. EDISES:

Q. If it were four pages, would that be too lengthy?

A. I would glance through it, but I wouldn't sign it unless
1073 I had more than a glance.

Q. If you felt that important matters were discussed at that meeting, you would examine it rather carefully, wouldn't you?

A. I believe I would, if I had time, and it were presented to me at such time and place that I had an opportunity to do it.

Mr. MERRICK. I wish to observe, in response to my request for all of the minutes of the ARTA local from May up until the date of this hearing, there has not been produced the minutes of any meeting of ARTA from August 13 to September 29.

Mr. EDISES. The September 13—May we take that up a little later—a little bit later, Mr. Merrick?

Mr. MERRICK. You may have anything you wish to say at any time, as far as I am concerned.

Mr. EDISES. Thank you.

By Mr. EDISES:

Q. I show you a copy——

Trial Examiner EICKHOFF. (Interrupting.) Is that an exhibit?

Mr. EDISES. This is an exhibit—B-2—Board's Exhibit No. 2.

Trial Examiner EICKHOFF. Just show it to the witness before you question him about it.

(Counsel Edises hands Exhibit 2 to witness.)

1074 By Mr. EDISES:

Q. I ask you whether you have ever seen that before.

(Witness reads minutes.)

Q. Do you have to read all of the minutes in order to know whether you have seen that particular copy before?

Trial Examiner EICKHOFF. Let him finish, Mr. Edises.

A. Yes.

By Mr. EDISES:

Q. All right. Do you recognize them yet, Mr. Hatch?

Trial Examiner EICKHOFF. Let him finish, please.

A. I recognize this part here; I might have seen this because I do remember this as being one of the reasons why I considered that the ARTA had not lived up to their agreement.

This query by Brother Stocklin asking, "What is the necessary quota of the members to vote for strike action?" and Brother Rathborne's answer is that "A large and overwhelming majority vote is necessary"—so I have apparently seen this although I don't remember when or where.

Q. Is that your signature at the last page?

A. Yes; right.

Trial Examiner EICKHOFF. After reading those minutes do you change your opinion as to whether the strike was legally called or not?

The WITNESS. No; I do not.

By Mr. EDISES:

1075 Q. Now, Mr. Hatch, on the last page there appears the following: "The undersigned"——

Trial Examiner EICKHOFF. Just a minute! Are you going to ask him whether that appears or not?

Mr. EDISES. I should like to be permitted to read this—it is very brief:

"I, the undersigned member of ARTA point to point division, have read the above minutes. I take this opportunity to vote on the resolution regarding joint action."

Under that is the word "Approvals." To the right of that, "Disapprovals." Beneath that, "Silent."

Under which of the last three words does your signature appear?

A. The resolution regarding joint action?
Q. I mean under "approvals," "disapprovals," or "silent"?
A. Under "Approvals" of joint action.
Q. Under approval of the resolution concerning joint action, is that not correct?
A. Yes; "I take this opportunity to vote on the resolution regarding joint action."
Q. Thank you. You have read these minutes now?
A. Not all of them; no.
Q. Would you care to read them more carefully?
A. No.
Q. Do you see anything in these minutes regarding a referendum vote on the strike?
1076 A. I don't recall seeing it; no.
Q. Would you like another opportunity to examine it?
A. No.
Trial Examiner EICKHOFF. Well, the exhibit is the best evidence of its contents. If you want him to read that resolution you may ask him to read it and you may ask him about it, or with respect to it.
The WITNESS. I remember now when I signed that. Will you permit me to tell when?
Mr. EDISES. Surely; go ahead.
The WITNESS. That was handed to me as I was working on my desk in the shop on company business, and I must confess that I did not read the whole thing; I didn't have time.

By Mr. EDISES:

Q. Did you sign it while you were walking?
A. I believe I did; my signature looks like it.

Examination by Trial Examiner EICKHOFF:

Q. You mean at the H. B. office?
A. Yes.
Q. When would that be?
A. Probably after that meeting—it must have been.
Q. Do you know positively that it was these minutes?
A. I recognize these columns, and I figured I was merely signing another straw vote.

By Mr. EDISES:

Q. Now, you are stating you didn't read the minutes. A
1077 moment ago you referred to some specific section of those minutes as a basis for certain opinion of yours.
A. I remember glancing through it—through the thing, and picking out this particular point; and that is what led me to sign the thing here—It was a reply to Mr. Cook's query that it required a large and overwhelming majority of the members.
Q. So that when you looked up those minutes, all that you saw was that section. How many lines was it?

Mr. MERRICK. I object again. This is cross-examination. You are allowing an indefinite cross-examination of this witness.

Trial Examiner EICKHOFF. Not indefinite, but I would like to see this cleared up one way or the other.

The WITNESS. It is quite apparent to me you are trying to make that out a regular vote.

Mr. MERRICK. It seems to me, Mr. Examiner, if he is interested in this witness' opinion, that is one thing. He has testified to his opinion, and if he wants to find out what the basis of it is, if it is an erroneous basis, that is perfectly proper for the attorney to show; but it doesn't seem to me there is any necessity to go into any lengthy cross-examination to impeach this particular witness. If he was correct or incorrect, that is all there is to it.

Trial Examiner EICKHOFF. It is not very clear to me
1078 just what the witness does testify to as to that, so I will permit further examination.

Mr. EDISES. Mr. Hatch has made a serious accusation at the officials of ARTA, namely, that they proceeded to take very important action, without consulting a majority of the members, and in fact, without consulting him.

Mr. MERRICK. Has the examiner read this resolution? I would like to have it brought to his attention at this time to see if he thinks it is not——

Mr. EDISES. (Interrupting.) Mr. Merrick, I am going to object to your stating anything which is going to prompt this witness, because I have some more questions to ask him. Now in regard to that resolution——

Trial Examiner EICKHOFF. (Interrupting.) Let me read it.

Mr. MERRICK. I think it would be very helpful. He is just trying to set some kind of a trap for the witness, and I don't think that is the proper thing to do, especially for his own witness.

Mr. EDISES. I am not trying to trap him.

Mr. MERRICK. You know that you are.

Trial Examiner EICKHOFF. Now, gentlemen.

(Trial Examiner Eickhoff reads document.)

Mr. EDISES. He hasn't stated any objection to that resolution.

Trial Examiner EICKHOFF. Just a minute! Just a minute!

(Discussion off the record.)

1079 Trial Examiner EICKHOFF. We will take a ten minute recess.

(At this point a recess was taken after which proceedings were resumed as follows:)

By Mr. EDISES:

Q. Mr. Hatch, you have read this resolution at the bottom of page 3 of these minutes?

(Witness examines minutes.)

A. Yes.

Q. What is your understanding of the following passage: "It being further resolved and jointly agreed that the Mackay Radio Company shall have until and including the 23rd day of September 1935, within which to execute said agreements or as amended and modified"?

Mr. MERRICK. I would suggest that that question should be changed so as to ask him what he understood that to mean at the time he signed it. The materiality is what he believed at the time he signed it.

By Mr. EDISES:

Q. Is your present understanding the same as at the time when you read it?

A. Yes.

Q. Will you answer the question?

A. Was my understanding of that passage that I just read at that time——

Q. (Interrupting.) The passage I just read to you?

1080 A. It is quite clear that Mackay Radio is given to that date to either accept or reject that agreement.

Q. What is your understanding of what happened at that date, the dead line, in the event the Mackay Radio did not accept that agreement?

A. That is, the reason it did not?

Q. What is your understanding—What is your understanding, in the event Mackay Radio did not accept?

A. It would be referred to the membership to a vote whether they would go out on strike.

Q. Where did you get that understanding? What is the basis of it? Does it arise solely from the language that I have just referred—that I have just read to you?

A. No.

Q. Well, what is the basis of it?

A. The basis of my belief was my conversation with Mr. Salisbury and others that when important action was to be taken, such as a strike, that it would be referred to the membership for a vote.

Q. And do you recall any specific occasion on which you spoke to Mr. Salisbury or anyone else on that subject?

A. Why, yes; I spoke to him about that before joining the union.

Q. And what was said at that time?

Mr. MERRICK. Can't the questions be limited a little
1081 more than that?

By Mr. EDISES:

Q. On signing this strike matter—I thought that was evident.

A. I advised Mr. Salisbury that I had belonged to a union in 1912 and '13 in which a strike was called. And apparently it was called by the leaders, rather than by the members as a whole. I didn't want to become involved in any union which would pursue

similar tactics. He assured me the ARTA was quite different when it came to a final decision on important matters such as a strike; that those decisions would be put to a vote of the entire membership affected.

Q. Every person affected by it would have an opportunity to express himself by a vote?

A. Yes.

Q. You considered that to be a very important point in connection with your joining ARTA?

A. Yes.

Examination by Trial Examiner EICKHOFF:

Q. You didn't take this resolution as an authorization to strike if the agreement weren't signed?

A. No; I took that vote—to vote whether they would put in separate agreements or whether it would be a joint agreement—that is, the heading above the list there.

Q. You thought if a strike would be called, that there would
1082 be further action by the union, or by the members of the union?

A. Certainly; circumstances might arise after a resolution like that was passed which would change the opinion of the membership as to the desirability of a strike, and I naturally thought that before a strike would be declared the membership would be given a final voice in the matter.

Q. Do you recall the meeting at which this resolution was adopted?

A. I was not in attendance at that meeting. The whole paper was handed to me when I was very busy. I merely glanced at this thing. That assured me that the thing would be referred to a vote of the membership as correct; and my signing that—my ratification or approval of the joint—that is, the agreements being put in jointly, rather than separately.

Q. Did any member of your union ever tell you that between the time of the adoption of this resolution and the expiration of the strike that that was a strike resolution?

A. No.

By Mr. EDISES:

Q. Did you ever talk to any member of your union concerning what happened at the meeting September 13?

A. No; I never discussed it excepting that particular thing that Brother Stockling said.

Q. With whom did you discuss that?

1083 A. I don't remember. I remember discussing it with someone who had attended that meeting.

Q. Now, thing hard and see if you can remember who it was.

Mr. MERRICK. I object to this. What importance is this? It is again just further cross examination, testing his memory, taking up a lot of time without developing a single material fact.

Trial Examiner EICKHOFF. Do you think that there is further evidence that you can elicit from this witness?

Mr. EDISES. He has stated that a very——

Trial Examiner EICKHOFF (interrupting). I know what he has stated. Have you something in mind that you think that you can bring out that will be pertinent?

Mr. EDISES. Yes, I would like to establish if it is true.

Trial Examiner EICKHOFF. I know what you may want to establish, but do you think the witness is withholding any information from you?

Mr. EDISES. I am only interested in finding out one further thing in connection with this particular proposition; that is, with whom he spoke after the meeting of September 13, concerning what went on at that meeting.

Mr. MERRICK. He has already answered it.

Mr. EDISES. When his memory has been prodded a little bit in other things he has remembered.

1084 A. I am afraid I can't recall.

Q. Do you know where it was?

A. In the office.

Q. H. B. office?

A. Yes.

Q. Does that help your recollection as to who it was?

A. No.

Q. Referring now again to the meeting at the Bellevue Hotel, and specifically the period just prior to the meeting—did you phone for the police?

A. No.

Q. Who did?

A. Mr. Jorgensen.

Q. Under what circumstances?

A. I don't recall the exact circumstances excepting that—it might have been the clerk who reported that there was a gathering outside.

Q. You are speculating now?

A. Yes, I don't know the exact circumstances.

Q. Did you suggest phoning for the police?

A. No.

Q. Did Mr. Burtz suggest phoning for the police?

A. No.

Trial Examiner EICKHOFF. Did you discuss calling for the police with Mr. Jorgensen?

1085 The WITNESS. Not at all; it was his own idea, as far as I know.

By Mr. EDISES:

Q. Did you hear him telephone?

A. Yes; from the room.

Q. From the room?

A. Yes.

Q. What was said in that conversation?

A. I don't remember.

Q. Do you remember anything at all?

Mr. MERRICK. I keep on objecting here. He had Mr. Jorgensen ready to be called as the next witness. Why not ask Mr. Jorgensen?

Mr. EDISES. Why not ask the witness?

Mr. MERRICK. You are calling him as your witness. You ought to produce the best witness.

Trial Examiner EICKHOFF. When the witness says "No," unless you think that he is withholding some information, and good reason to believe that he is, "No" is "no."

Mr. EDISES. I have good reason to believe that he is.

Trial Examiner EICKHOFF. You would like to examine him further about it?

Mr. EDISES. I would.

Trial Examiner EICKHOFF. All right.

By Mr. EDISES:

Q. You say you were present in the room when Mr. Jorgensen telephoned for the police?

1086 A. I was either in the room—in the outside room, or the inner room; at any rate I heard him telephone.

Q. Now, what was said?

A. I don't remember just exactly what he said, I remember he had some difficulty in getting hold of the right—he seemed to have some difficulty in getting hold of the right police station to make the necessary arrangements, but what he said I don't remember.

Q. You say he had some difficulty in getting hold of the right police station? He phoned several different stations, more than one station, is that it?

A. No; I think he called the Harbor Police.

Q. The Harbor Police?

A. Yes.

Q. What did you mean when you said, "He had difficulty in getting the right one"?

A. Well, I remember there was some argument. Just exactly what it was—it seemed his conversation took longer than necessary.

Q. About how long would you say the conversation took?

A. I should judge two or three minutes.

Q. Two or three minutes?

A. Yes.

Q. Did you—Was it your impression—Did you get the impres-

1087 sion that Mr. Jorgensen had made satisfactory arrangements?

Mr. MERRICK. I object to that.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. He was phoning to ask for police protection, wasn't he?

Mr. MERRICK. I object to this unless he states what he heard him say.

Trial Examiner EICKHOFF. I will allow the question if the witness can answer.

A. Well, my impression was not to protect the meeting, but to protect the men as they were leaving and entering the hotel in case of any disturbance.

By Mr. EDISES:

Q. Do you remember the exact words in which he spoke about disturbance?

A. No; I do not.

Q. But you do know that was his general subject?

A. Yes.

Q. He asked the police to come for this purpose?

A. Yes.

Mr. MERRICK. We will stipulate this.

Mr. EDISES. Thank you, Mr. Merrick.

Mr. MERRICK. Put Mr. Jorgensen on; let him tell the conversation.

By Mr. EDISES:

Q. Did you hear Mr. Jorgensen say anything as to what men he expected to make trouble?

1088 A. No.

Q. How long have you known Mr. Dewey?

A. I first met Mr. Dewey when I came to the H. B. office in 1933, I think it was.

Q. Is he a good friend of yours?

A. Not particularly; that is, I don't consider him to be a personal friend at all. I have never visited at his house or had any social contacts with him.

Q. You testified to having met Mr. Dewey at a restaurant?

A. Yes.

Q. During the course of the strike? Was that meeting by appointment?

A. No; merely a coincidence.

Q. You customarily eat—By the way, what was the restaurant?

A. Foster's, across from Market Street.

Q. You customarily eat there?

A. Yes.

Q. Can you remember exactly what was said at the time you had that discussion with Mr. Dewey?

A. I believe you asked me that question before, and I answered "No", but I have been reconsidering the question.

Q. You have spoken to Mr. Merrick about that since yesterday, haven't you?

A. No; I haven't discussed that with anyone.

1089 Q. All right, go ahead.

A. I do recall Mr. Dewey's making a sort of apology for his stand during the strike.

Q. What do you mean by that?

A. Well, he said, "You know it is part of my job to try to keep things running here. It appears that I am trying to work against the boys, but there is nothing personal in it at all."

Q. How did that subject happen to come up?

A. I volunteered the information.

Q. That was the first thing that he said? He saw you were sitting there, "I feel that I have to explain my position," or words to that effect, is that correct?

A. Yes.

Q. What else was said?

A. Well, I explained to him that I was on the other side of the fence, that I had no personal feelings against him.

Q. When you mentioned you were "on the other side of the fence" you meant you were supporting ARTA in the strike, is that correct?

A. Right.

Mr. MERRICK. Exactly the same question you asked this morning—or yesterday, I mean.

Mr. EDISES. Thank you for reminding me, Mr. Merrick.

Trial Examiner EICKHOFF. Go ahead.

1090 By Mr. EDISES:

Q. What else was mentioned?

A. Nothing, except that he gave me the information that the New York office was running full blast, the men had gone back to work there.

Q. Did you say anything to that?

A. I don't recall whether I did; I might have expressed surprise.

Q. Anything else?

A. No; not that I remember.

Q. Your best recollection is that you didn't say anything else?

A. To my best recollection.

Q. Would it help your memory if I asked you whether or not you asked him the source of his information?

A. I believe he volunteered the source of his information. He said that that news had come to Mr. Rodman by telegram.

Q. Had come to Mr. Rodman by telegram?

A. Yes; either telegram or telephone, I have forgotten which.

Q. Was there anything further said about the source of the information?

A. Not that I recall.

Q. You didn't ask him any questions about it at all, did you?

A. No.

Q. Did you talk about the strike with Mr. Dewey?

1091 A. No; in fact, I left shortly after that. I left before he did. I was finishing by breakfast and he came in.

Q. About how long did the conversation last?

A. Not over five minutes, at the most.

Q. Was anybody else present?

A. I didn't notice anyone, but there might have been others in the restaurant at the time that you mean, but I didn't notice them.

Q. Did it occur to you at the time that Mr. Dewey might be trying to hurt the morale of the men on strike?

A. No.

Q. Didn't occur to you?

A. No; it struck me that he was entirely sincere in what he said to me.

Q. It didn't occur to you that he might have been——

Mr. MERRICK. I object to this.

Trial Examiner EICKHOFF. Sustained. Now, if in examining this witness there is something further you want from him, you may lead him, but don't just repeat the same questions over and again, because we are apt to get nowhere.

Mr. EDISES. I agree with you, Mr. Examiner, but it seems——

Trial Examiner EICKHOFF. You may ask a leading or suggestive question if you think there is some specific thing——

Mr. EDISES. (Interrupting.) My only reason for doing that, it seems that when I have asked him the questions again, and
1092 focused his attention again, he has remembered something.

Trial Examiner EICKHOFF. But other——

Mr. MERRICK. (Interrupting.) I suggest that the quickest way to return is——

Mr. EDISES. (Interrupting.) I thank you for the suggestion.

Mr. MERRICK. I object to coming here, spending such an enormous amount of time while Mr. Edises goes over testimony with the witness. I don't think it is fair.

Trial Examiner EICKHOFF. Proceed, Mr. Edises.

Mr. EDISES. Thank you.

By Mr. EDISES:

Q. Now, then, you have testified that you have told Mr. Bash about the information that Mr. Dewey had given you; is that right?

A. Yes.

Q. Mr. Hatch, did you expect Mr. Bash to recommend calling off the strike on the basis of the information that Mr. Dewey gave you?

A. No.

Q. You didn't? What do you mean by that?

A. I expected that he would at least confer with the other officials and make some move toward finding out whether it was true or not.

Q. Do you know whether information was being received from ARTA officials in New York at that time?

1093 A. It was quite apparent that what I told him about the New York group going back to work was news to him.

Q. Have you any reason to know whether or not Mr. Dewey's account of the situation, or the ARTA officials' account, was correct?

A. Well, I know that Mr. Dewey's account was correct.

Q. How do you know?

A. From information that I had received afterwards.

Trial Examiner EICKHOFF. Just a minute! The question is not what he knew now; the question is what he knew then, isn't it?

Mr. EDISES. Exactly.

Mr. MERRICK. When——

Trial Examiner EICKHOFF. (Interrupting.) Because the attitude you are inquiring into is his attitude at that time.

Mr. MERRICK. He has already testified, in listening to his radio at home.

Mr. EDISES. Thank you for prompting him, Mr. Merrick.

Mr. MERRICK. It is in the record; I am not prompting him.

Trial Examiner EICKHOFF. I am not going to let you cross examine this witness all the time, just because I did on certain matters. Any time it appears that the truth will be served by cross examination, I will permit it.

Mr. EDISES. Thank you.

By Mr. EDISES:

Q. Did you at the time——

1094 Mr. MERRICK. What time?

By Mr. EDISES:

Q. At the time of your conversation with Mr. Bash, in which you related to him what Mr. Dewey told you, did you have any reason then for believing that Mr. Dewey's information gave a truer picture of the New York situation than the information that the union had?

A. I don't know of any information that the union had. I don't know that they had any picture at all.

Q. Don't you know telegrams had been received regularly and had been posted on the bulletin——

Mr. MERRICK. (Interrupting.) This is cross examination.

Trial Examiner EICKHOFF. Didn't you know?

The WITNESS. I saw several telegrams on the bulletin board there, yes; but not including that information.

By Mr. EDISES:

Q. You didn't see anything including that information?

A. No.

Q. Now, you testified yesterday, if I am correct, as to disapproving, or having certain grievances against certain officers of ARTA; and I believe that you first mentioned Mr. Salisbury, and stated that you didn't—you later changed your testimony to state that you didn't have any grievance against Mr. Salisbury, but you did have grievances against Mr. Bash. Am I correct in saying you assigned your reason to the fact that he withheld this information from the men?

1095 A. His own attitude toward me when I gave him that information.

Q. What was the attitude?

A. It was strictly antagonistic.

Q. Where were you when you gave him the information?
A. ARTA headquarters.
Q. Did you attempt to convey that information to any of the other men?
A. No.
Q. Did anybody prevent you from doing it?
A. No.
Mr. MERRICK. Now I object again to this cross-examination. Is there any reason for allowing it now?
Trial Examiner EICKHOFF. I think so, too. No—It is really as much argumentative as it is cross-examination. If you have facts to bring out, why, get to those facts.

By Mr. EDISES:

Q. When you first learned about the list—this list of the eleven men who were not to be permitted to return to work as the others were—from Mr. Jorgensen, did he characterize that list in any way? How did he refer to it?
Mr. MERRICK. I submit again, this has all been testified. He didn't submit a list; he simply struck off names.
Mr. EDISES. A list may be oral as well as written.
1096 Mr. MERRICK. I submit it is all repetition.
Trial Examiner EICKHOFF. I will allow this question.
A. I don't recall any special remarks that he made about those men.

By Mr. EDISES:

Q. I am referring to how he characterized the list. You are probably aware that those lists are referred to with a vulgar adjective in front of them. I assume you know what I am referring to.
A. I think I was the originator of the adjective that you have in mind.
Q. What did that—when did you use that adjective with that word; what does it connote to you?
Mr. MERRICK. May the counsel be advised as to what this adjective is?
Trial Examiner EICKHOFF. Do you object to this question?
Mr. MERRICK. I object until it is explained. This isn't obvious, to what word he is referring to.
Trial Examiner EICKHOFF. Objection sustained.
Mr. MERRICK. Unless he wants to advise me.
Trial Examiner EICKHOFF. Just a minute! Are you going to show that the list was so referred to, through this witness' testimony?
Mr. EDISES. I want to find out if Mr. Jorgensen so referred to the list when he first mentioned it to him.
Mr. MERRICK. What difference does that make? I don't
1097 know what it is.
Mr. EDISES. It has bearing.
Mr. MERRICK. I think it has such remote bearing as nine-tenths of your testimony has.

Trial Examiner EICKHOFF. The witness has invariably said "No." You may ask him again if you want to satisfy yourself.

By Mr. EDISES:

Q. Did you refer to the list as a shit-list?

A. Yes.

Q. What does that mean?

Trial Examiner EICKHOFF. You have asked him several times—The question is, what did it mean to you when he said it.

A. Well, it meant to me that it was of men who were in a separate category from the rest—black sheep, so to speak—different from the rest.

By Mr. EDISES:

Q. In other words, when you referred to it as the shit-list, you did so because you felt these men were "black sheep," I take this testimony to be?

A. No; I didn't feel them to be "black sheep." I was merely using that as a metaphor of speech.

Q. In what respect different from the rest?

A. Well, the rest of the men were to be taken back without
1098 any qualifications whatsover, whereas the other men's applications would have to have final approval by Mr. Stone.

Q. That is the only difference?

A. The only difference that I knew of.

Q. When you learned that Mr. Bash's name was on this list, what was your reaction to that?

A. No greater than it was in reference to the others.

Mr. MERRICK. Does the Examiner think this line of questioning is proper? It seems to me wholly irrelevant.

Trial Examiner EICKHOFF. I do not. I don't know what counsel is seeking to show.

Mr. MERRICK. If he goes through every name on the list he will never get anywhere when he gets there.

By Mr. EDISES:

Q. When Mr. Jorgensen arrived at the meeting at the Bellevue hotel—After he left for an hour and a half, as you testified——

The WITNESS. (Interrupting.) Yes.

Q. (Continuing.) Did you tell him whom you had gotten in touch with?

A. No.

Q. Any mention made of the telephoning after he arrived—of your previous telephoning?

A. Yes; Mr. Jorgensen wanted to get on with the meeting. I told him there was a couple of fellows that I had phoned, notably Mr. Hoxie and Sam York, who were now on their way over on the
1099 ferry; and we wanted to wait until they arrived. In other words, we wanted to get everybody there we could possibly get before we called a meeting.

Examination by Trial Examiner EICKHOFF:

Q. With the exception of the men on this list?

A. By that time the men on the list—most of them—had arrived with—were on the scene.

Q. Yes; but you didn't want particularly to get them there?

A. It was immaterial to me whether they were there or not.

Q. I mean, you didn't want them there?

A. No.

By Mr. EDISES:

Q. After Mr. Jorgensen arrived, did you discuss how the meeting was to be conducted?

A. Yes.

Q. What was said?

A. I said "You are merely a guest here. You are to take no part in this meeting after you have expressed the company's viewpoint."

Q. How did that statement of yours come to be made? How did it arise?

A. I volunteered that; I didn't think it was right for him to take any part in the proceedings.

Q. That was just out of a clear sky? You volunteered it?

A. That was the obvious thing to say.

Q. What did you mean by "not taking part in any proceed-
1100 ings"? Did you mean he——

A. (Interrupting.) Not to try to influence their vote.

Q. Why was he there?

A. To tell the men in person what the company was willing to do and not willing to do.

Q. It was your understanding that Mr. Jorgensen was entitled to speak for the company?

A. Yes; he was the employer of those men.

Q. He was the employer of those men?

A. Their boss; their immediate superior.

Q. Mr. Jorgensen told you he was entitled to speak for the company?

A. I knew that; he didn't have to tell me that.

Q. Was anything said about that time who ought to be chairman of the meeting?

A. No.

Q. Well, how—how did that arise?

A. You mean how the chairman happened to be appointed?

Q. How was the chairman appointed?

A. I got up and said "Before we have any meeting here, we should appoint a chairman."

Q. After how many men arrived?

A. All of the men had arrived—those we could get in touch with.

Q. A total of how many?

1101 A. Thirty-six, plus Mr. Jorgensen.

Q. Go ahead with your statement.

A. I said that I thought the meeting should be conducted in an orderly way, or in other words, words to that effect; and that a chairman should be appointed.

I said, "It seems to me nominations are in order for a chairman of this meeting."

Q. Then what was done?

A. I for one nominated Mr. Burtz.

Q. You called for nominations; then you nominated Mr. Burtz, is that right?

A. Yes. Mr. Burtz declined the nomination. He, in turn, nominated Mr. McLaughlin.

Q. Did Mr. Burtz say why he declined?

A. No.

Q. Then what was said?

A. They took an oral vote, raising hands on whether Mr. McLaughlin should be nominated—elected or not; and he was elected chairman.

Q. Had you spoken to Mr. McLaughlin previous to this time that night?

A. Not as to how the meeting should be conducted or anything. The only conversation I had had with him was—I didn't even have a conversation with him. I overheard his conversation with Mr. Rathborne.

1102 Q. What did you hear?

Mr. MERRICK. I object to this hearsay as irrelevant.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. You didn't speak to Mr. Jorgensen, yourself, however?

A. You mean Mr. McLaughlin.

Q. Mr. McLaughlin, yourself.

A. I don't know if I did or not. If I did it was nothing of importance.

Q. What happened then?

A. Mr. McLaughlin——

Trial Examiner EICKHOFF. Just a minute! Somebody may have walked in or out.

Mr. EDISES. I thought it understood that I am referring now to the important steps, the conduct of the meeting in my questions.

Trial Examiner EICKHOFF. Anything new going to be brought out? Anything particularly pertinent to be corroborative?

Mr. EDISES. I think it extremely important to have this witness' version as to what went on at that meeting.

Trial Examiner EICKHOFF. All right, go ahead.

By Mr. EDISES:

Q. Tell us what went on. Mr. McLaughlin was elected chairman?

A. The next question which I brought up myself was what

1103 would determine or decide the vote—that is, what sort of

majority would be necessary in order to carry a vote one way or the other; and I suggested or made a motion that a two-thirds majority vote, or more, be required in order to decide the issue; and a vote was taken on that issue by raising hands.

Q. Was anything said about whether the eleven men on the list were to have a right to vote?

A. Yes; that question arose.

Q. What was said?

A. It was decided that they would be permitted to have a vote.

Q. What was your position on that?

A. That everybody there should have a vote, in my opinion.

Q. Anyone present express any opposition to their having a vote?

A. No.

Q. Now, go ahead with your account of what happened.

A. Well, I can't give a very good account from there on because I walked into the other room. There was considerable argument going on among the individuals and the chairman, and I considered that I done plenty by helping to get the fellows together, and I didn't want to take part in any of the arguments whatsoever.

1104 So I walked into one of the other rooms, took some of the hotel stationery there, and proceeded to make some blank ballot slips, so I can't give an account of what happened in there until the final vote was taken.

Q. Where was Mr. Jorgensen at the time the first vote was taken for chairman?

A. He was in the bedroom adjacent to the meeting room.

Q. Was the doorway between the two rooms—was it crowded with men?

A. I believe Mr. McLaughlin stood in the doorway most of the time while he was talking to the people present.

Q. And the doorway was open between the two rooms at all times?

A. Oh, yes.

Q. Did you hear Mr. Jorgensen speak?

A. Not very clearly; he stood in the doorway with his back to me, when he was addressing the meeting.

Q. Was he there during most of the meeting, in the doorway?

A. No; after he said his say, stated the company's position, he retired to the other room.

Q. What did you hear him say?

A. Nevertheless, I can recall what he said. As I said before, I didn't hear him very distinctly. Nevertheless I knew beforehand about what he was going to say. I didn't pay much attention to it.

Q. You say that he knew beforehand what he was going to say? Explain that statement, please.

A. He explained beforehand that all of the members—all of

1105 the H. B. employees would be taken back to work; but there were several men whose names he had checked off the list, whose applications would have to be approved of by Mr. Stone.

Q. He told that there to Mr. Burtz and yourself?
A. Yes, we knew that.
Q. Can you go ahead now with your recollection of exactly what happened, as closely as you can remember?
A. He repeated just what I said then.
Q. Did he say anything else?
A. He re-read the names on the list.
Q. He read them off of a list?
A. Twice; I do remember that.
Q. Was it typewritten or what?
A. No; before the meeting came to order he had taken a piece of stationery, and copied off the names off of the main list that we telephoned from.
Q. What was the main list—was that on official stationery?
A. A list of the entire personnel of the H. B. office.
Q. Oh, Mackay stationery?
A. A blank letter paper.
Q. Oh, a blank letter paper. What did Mr. Jorgensen do after he finished talking?
A. Went into the other room.
Q. And there were men in the other room with him?
A. Mr. Loudermilk and Mr. Palmer, I believe, went in
1106 there during the progress of the meeting.
Q. Did you see Mr. Loudermilk talking with Mr. Jorgensen at any time?
A. Yes.
Q. Concerning what did you hear?
A. I don't know; I didn't overhear the conversation.
Q. You didn't overhear the conversation?
A. No.
Q. What was done after Mr. Jorgensen had finished talking?
Trial Examiner EICKHOFF. By whom? What about?
Mr. EDISES. I would like to have him——
The WITNESS. (interrupting.) You mean at the meeting?
Mr. EDISES. I would like to have him just give a narrative account, if he can.
A. The vote was taken then.

By Mr. EDISES:

Q. Was there any speeches made, or any discussion before the vote was taken?
A. Nothing formal; considerable conversation between the men and so forth, but Mr. McLaughlin might have made some statements, although I didn't listen to them.
Q. Did anybody bring up the question why this wasn't an ARTA meeting?
A. That I don't know. As I said before, I didn't pay much attention to the discussion. In fact, I would have much preferred that there be no discussion whatever. Everybody knew what they
1107 were there for; it wasn't a place or time for argument.

Q. Is that your only reason for not wanting any discussion whatever?

A. I didn't want a lot of controversial subjects to come up. I wanted a clean-cut issue, a secret ballot, "Yes" or "No." to go back or stay out, and abide by that decision.

Q. What was your reason for not wanting any controversial matters to come up?

A. Because it was almost five o'clock in the morning, and I had been up all night. I was completely all in.

Q. Did you want to keep the ARTA question out of it?

A. I wanted to keep all questions irrelevant to the issue out of it.

Q. Including the ARTA?

A. Yes.

Q. You felt that that was irrelevant to the issue?

A. Yes.

Q. Do you remember the result of the vote?

A. Yes.

Q. What was it?

A. 24 voted to go back to work; six voted against going back to work; and six were blank ballots.

Q. How many men of the H. B. office who were to strike did not attend the meeting at the Bellevue?

A. I never checked up.

1108 Mr. MERRICK. That is a simple question of addition and subtraction.

By Mr. EDISES:

Q. Do you know how many men went out on strike?

A. Not exactly.

Q. Do you know whether it was in the neighborhood of around 60?

A. I never checked up on how many men went out.

Mr. MERRICK. I object to this. He is apparently laying the ground for some argument. Let him make the argument from the evidence. It is already in.

By Mr. EDISES:

Q. It is a fact——

Mr. MERRICK. (Interrupting.) I object to that question.

Q. (Continuing.) You know that a considerable number——

Mr. MERRICK. (Interrupting.) I object.

Trial Examiner EICKHOFF. Let him complete it first.

By Mr. EDISES:

Q. You knew, did you not, that a considerable number of men who worked at the H. B. office had not been reached regarding the meeting?

Mr. MERRICK. No objection.

A. Yes; certainly. I knew that we didn't have the entire H. B. personnel present.

By Mr. EDISES:

Q. Did you have any idea of about what percentage of them you did have?

A. No.

1109 Q. Prior to—Wait a minute! What was done—What was said and done after the vote was taken?

A. I don't know what was said, but I know what was done.

Q. What was done?

A. Well, we all marched down to the office with the exception of a few men.

Q. By the way, did you see the police at any time during the meeting?

Trial Examiner EICKHOFF. Does it make any difference, counsel?

MR. EDISES. It does, I think it does.

MR. MERRICK. I have an exaggerated notion of things.

A. Yes; one of the officers on duty said there was no sign of a disturbance; wanted to know if it was necessary to remain on the job.

By Mr. EDISES:

Q. Did Mr. Jorgensen speak to him?

A. Yes; he said he though it better that they remain there until the meeting was all over.

MR. MERRICK. Very significant testimony.

By Mr. EDISES:

Q. Now, you all went—you went down to the H. B. office with the exception of what men?

A. I can't state that; I don't know.

Q. What time did you get down to the H. B. office?

A. Around six o'clock in the morning.

Q. Were you asked at that time whether or not you were re-

1110 applying for work?

A. No.

Q. When were you first asked to re-apply for work?

A. You mean when was I officially asked to put in an official application?

Q. Yes.

A. I don't remember exactly, but I believe it was the following afternoon, when I received a written application.

Q. The afternoon of Wednesday, October 9?

A. Yes.

Q. That was the first application for work that you made?

A. Yes.

Q. Verbal or written?

A. No.

Q. You did make an earlier application?

A. Well, I figured that my calling up Mr. Jorgensen in the first place was an application for work.

Q. Yes; I understand that; but I mean, after you got back to the H. B. office around six a. m., from that time until the formal written application, you were not asked whether you re-applied for work?
A. No.

Colloquy

Trial Examiner EICKHOFF. How much more of this?
Mr. EDISES. Nothing in regard to that particular point, but I have some more I want to ask him.
1111 Trial Examiner EICKHOFF. How long will it take to conclude your examination?
Mr. EDISES. I think I can conclude it in half an hour.
Trial Examiner EICKHOFF. Well, I think we will adjourn until tomorrow morning at 10.
Mr. MERRICK. Before adjourning, I want to enter a formal protest in the record at the way in which this hearing is being handled.
We have been here since 2:45 this afternoon, and except for a period of about 15 minutes—between a quarter of four and four o'clock—no additional evidence of any kind whatsoever has been brought out, or even seriously attempted to be brought out by the attorney for the Board. He has been attempting merely to have the witness repeat the testimony that he gave yesterday afternoon, attempting to attack the credibility of his testimony and a certain tendency to try to impeach him.
I think it is obvious that the attorney for the Board has been fishing blindly. He has the right to examine the witness before he brings him to the stand, and I think it is his duty to do so, and I request the Examiner instruct the attorney for the Board to prepare his case with the witness before he comes to the stand with another witness.
I don't think it fair to opposing counsel to ask him to come
1112 here and spend this length of time listening to the attorney for the Board struggle with the witness and get absolutely nowhere.
I do not, of course, object to many of the Examiner's rulings as to the leeway that he has under the law, or at least under the rules of the Board, that he is bound by all the technical rules of evidence, but I do think he is allowing much too great a leeway to counsel for the Board in permitting him cross-examination where there is no basis whatsoever for it, and particularly permitting him to attempt to impeach the witness that he hasn't established any basis for.
I repeat that I would like the Examiner to instruct the attorney for the Board to go over the testimony with the next witness before he calls him to the stand.
Mr. EDISES. If Mr. Hatch is my witness what was——
Mr. MERRICK. (Interrupting.) You called him. There is no question about his being your witness.
Mr. EDISES. What was the basis of your interrogating him when he had left the stand?

Mr. MERRICK. I would be very glad to answer that question.

Trial Examiner EICKHOFF. Both of you will please address the Examiner.

Mr. EDISES. I want to formally ask Mr. Merrick, if Mr.
1113 Hatch is my witness and a friendly witness, what was the basis of his interrogating my witness outside of the hearing between yesterday and today?

Mr. MERRICK. I would be very glad to have the privilege of answering that.

At the close of yesterday's testimony the attorney for the Board asked several questions that I felt sure the witness had not understood when he gave his answers. I noticed afterwards that there was considerable interest in the answers given to those questions.

I thought about it some more, and whether or not the Board would make the charge—whether it would make the charge that I was tampering with their witness if I brought this matter to his attention; and I talked with Mr. Livingston, who is my associate here, and whose ethics in regard to the profession are as high as any; certainly as any that I know of.

I told him the circumstances and asked him whether he thought it would be unethical for me to bring this to Mr. Hatch's attention, and tell him that he had a right to request that the questions and answers be read to him when he resumed the stand today, and tell him that if he desired to do so, I had no doubt that the Examiner would permit it.

Mr. Livingston told me that he felt that it was not only proper for me to do so, but I had a duty to do so. Because we are attempt-
1114 ing to get the actual truth from these witnesses, and not trap them and catch them off guard, as the attorney for the Board has said.

After this conversation with Mr. Livingston, I told Mr. Jorgensen to tell Mr. Hatch that I wanted him to think over his last answers to those questions yesterday afternoon, and if he would like to discuss the matter with me I would be glad to see him.

I received word that he would like to do so. So, Mr. Hatch came in and I repeated what I have just said.

I asked him if he remembered what his answers to those questions were. He said that he did.

I said, "Did you mean what you apparently did, that your hostility toward the officers of the union just started from Mr. Jorgensen's conversation, or that anything that Mr. Jorgensen said to you influenced you insofar as your opinion of the officers were concerned?

He said "All that I meant was that Mr. Jorgensen was the first one to tell me about the strike, and, feeling as I did, that no strike had been authorized, I, from that moment, thought my leaders were not doing their duty properly."

"Well," I said, "I do not think that is the impression that your testimony conveyed; and I would suggest that, if you wish to do so, you have the right to request the reporter, when you resume

1115 the stand, to ask that those questions and answers be re-read, and then tell the Examiner that you would like to enlarge upon those answers or explain them."

He said he would do so.

Now, that is the full explanation.

Trial Examiner EICKHOFF. Well, as I said before, I will not make any sweeping or general rulings; I will admonish counsel as the occasion may arise.

Mr. MERRICK. Don't you think it is the proper thing for me to ask that he be requested to go over the testimony with the witness?

This kind of thing wouldn't be tolerated in any kind of proceeding that I have ever attended before.

Trial Examiner EICKHOFF. It has been apparent to me, since you forced me into this position, that maybe some evidence by Mr. Hatch could not have been brought out in an interview with counsel, so in this case I will make no such admonition.

Mr. MERRICK. There is no evidence that could not be brought out by interview.

Trial Examiner EICKHOFF. It might not have come out from ordinary interview.

Mr. MERRICK. Well, there is a great deal of it that could have come out.

1116 Trial Examiner EICKHOFF. Counsel also felt that this witness is hostile and adverse. He took that position at the outset.

Mr. MERRICK. Is he going to take the same position, then, of all the rest of the employees of Mackay Radio that he has been requested to produce?

Trial Examiner EICKHOFF. It is perfectly reasonable that the counsel, feeling the witness was hostile, would not attempt to go over his testimony with him.

Mr. MERRICK. All right, but my observation stands.

Trial Examiner EICKHOFF. We'll adjourn until 10 o'clock.

(Thereupon, at 4:05 o'clock p. m., the hearing in the above-entitled cause was adjourned until 10:00 o'clock a. m., Thursday, December 12, 1935.)

1117 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA.
Thursday, December 12, 1935.

(Met pursuant to adjournment at 10:10 a. m.)

PROCEEDINGS

Trial Examiner EICKHOFF. Are you ready to proceed, gentlemen?

Mr. LIVINGSTON. Yes, your Honor.

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. You have a statement to make, Mr. Livingston?

Mr. LIVINGSTON. Yes. I ask leave to appear again in this matter for one purpose only, and only, also, because I am a member of this local Bar and Mr. Merrick is not.

1118 I understand that during the session yesterday, or after the session, either on or off the record—I don't know which—there was some suggestion made that there was some impropriety in the conduct of Mr. Merrick, particularly with reference to the fact that he had talked to Mr. Hatch, a witness in this proceeding.

This morning, prior to the session, in order to avoid embarrassment, I requested Mr. Edises to make a statement to this effect: that if there was any imputation or suggestion of lack of complete attention to all of the ethics of our profession, that such imputation be withdrawn.

I did this in behalf of Mr. Merrick and myself because I take full responsibility personally for everything that was done by Mr. Merrick with reference to the matter of the witness Hatch.

Mr. Edises refuses to make any statement one way or the other. Therefore, I request the Examiner to indicate that, insofar as he knows, anything which appeared in this case, and, particularly with reference to the Witness Hatch, does not involve any infringement upon ethics as known to reputable lawyers.

In the second place I will ask counsel for the Labor Board, in open court and on the record, to withdraw any such imputation, if such imputation was made.

My request is, therefore, first made to you, Mr. Examiner, and, second, made to the counsel for the Board.

1119 Trial Examiner EICKHOFF. There is nothing that I recall that imputed unethical conduct of Mr. Merrick. What was said I took it as going to the question of whose witness this was.

Mr. LIVINGSTON. If I could get that same statement from counsel for the Board I think it would be quite satisfactory to us.

Trial Examiner EICKHOFF. Any statement you care to make, Mr. Edises?

Mr. EDISES. I do not believe that I have anything to add to what appears in the record.

Trial Examiner EICKHOFF. Well, I think the question is this: Do you or don't you impute misconduct or unethical conduct to opposing counsel?

Mr. EDISES. I am unable to express any opinion on that point.

Trial Examiner EICKHOFF. Did you intend to in your statement? You do not need to answer the question if you do not want to.

Mr. EDISES. Well, I wish to make this statement in regard to the situation: That I am unable to state whether the factual situation, as explained by Mr. Merrick, in his answer to me yesterday when I asked him why he had spoken to Mr. Hatch between sessions,

1120 if, as he insisted, Mr. Hatch was my witness—as I was saying,

I don't know whether that factual situation, as appears from Mr. Merrick's statement, does constitute an unethical practice. I am, consequently, unable to express an opinion on the point, and wish to go on record as having neither imputed nor intended to impute any unethical conduct, in the absence of a more complete knowledge as to just exactly what standing that practice has.

Trial Examiner EICKHOFF. The question is, what you meant at the time.

Mr. EDISES. My question, at the time, was based on my understanding that when a party has called a witness, if that witness is a witness for the party calling him, that lawyers do not commonly have informal off-the-record contact with that witness without first having obtained the consent or spoken to the lawyer who called him.

Perhaps I am mistaken in my knowledge of the practice. At any rate, that was my reason for having asked the question.

I wish to make it clear that I did not use the word "unethical" at any time.

I also want to make it perfectly clear that I was never asked at any time by Mr. Merrick or Mr. Livingston, as to whether they could talk to the witness, who has been so frequently termed, by Mr. Merrick, my witness, referring to the Board.

1121 Mr. LIVINGSTON. May I suggest to the Examiner that it be told to counsel for the Board that the phrase "my witness" or "your witness" merely means, the person has called the witness, and, therefore, in the absence of evidence of hostility, surprise, or evidence that he is an adverse party, or officer of an adverse party, he is deemed to be the witness of the party calling him; but that the phrase "my witness" or "your witness," as the case may be, does not involve ownership, title, or even a leasehold; that that phrase does not mean that the witness is not everybody's witness for the purpose of arriving at the truth; that under ethical principles, unless there is some relationship as a party, or otherwise, between the attorney calling the witness and the attorney, it is perfectly proper for anybody to talk to a witness so long as he does not attempt to tamper with the truth.

I think counsel for the Board should be so advised.

Trial Examiner EICKHOFF. My opinion is that you are making a mountain out of a mole hill.

Mr. LIVINGSTON. Probably, but we have a habit of doing that when anything comes up that involves the suggestion of lack of ethics. And I think it is a rather good thing that we do, Mr. Examiner. From my knowledge of you, I think that you would too, under like circumstances.

Trial Examiner EICKHOFF. I thing there is enough in the
1122 record to make everybody's position clear—as far as there is any clarity to it.

Mr. LIVINGSTON. Except this, Mr. Examiner, and I think the Examiner should adopt my suggestion at least to the effect——

Trial Examiner EICKHOFF. You have not been attending the last few days, Mr. Livingston. I think I made my position clear with respect to the witness Hatch, as to what I took him to be, from time to time, so I am not going to give anybody a lecture on rules of evidence or the law of the case, or anything else.

Mr. LIVINGSTON. I can understand that too, but my request is to the Examiner in the interest of peace. I think that if Mr. Edises is laboring under the idea that it is improper to speak to a witness who has been called by the other side, he should be advised that it isn't improper.

Trial Examiner EICKHOFF. When that comes up, if it does come up——

Mr. LIVINGSTON. (Interrupting.) It is up now, if the Examiner please, right now.

Trial Examiner EICKHOFF. I do not understand that Mr. Edises takes the position that you didn't have the right to speak to the Witness Hatch.

Mr. LIVINGSTON. I think he just said so, if the Examiner please.

1123 Mr. EDISES. I would like to make my position clear.

Trial Examiner EICKHOFF. He started it all with an "if."

Mr. EDISES. When Mr. Hatch informed the court yesterday that his change of testimony was connected with an interview that he had with Mr. Merrick, I said nothing at the time, and would have said nothing; and, moreover, I want to state that I did not feel that any impropriety had been committed for the reason that it has been my feeling all along that Mr. Hatch was a hostile witness, an adverse witness, and I have been trying to establish in the record a definite connection between Mr. Hatch and the company; consequently, I was willing to let the situation remain as it was. In other words, I really felt that, as a matter of fact, he was more your witness than mine.

However, when, after the close of my examination of Mr. Hatch, Mr. Merrick got up and made a long-winded statement to the effect——

Mr. LIVINGSTON. (Interrupting.) You don't mean "long-winded" when ethical matters were involved?

Mr. EDISES. (Continuing.) To the effect that Hatch was my witness, and that I ought to have examined him before I put him on the stand, and so on and so forth, then I felt that inasmuch as he was so insistent upon the point that he didn't have anything to do
1124 with the witness, that I was entitled to ask him why he had spoken to the witness between sessions.

That is my position.

Trial Examiner EICKHOFF. I think that is enough for the record, gentlemen.

Mr. LIVINGSTON. I think it is sufficient but I would like to express my appreciation to the Examiner for the indulgence allowed me in this matter, which is a matter of personal interest to me.

Now, may I again be gladly excused, Mr. Examiner, so I can go about by business?

Trial Examiner EICKHOFF. You may.

Is Mr. Hatch to be recalled to the stand?

Mr. EDISES. Yes; I have some further questions.

Trial Examiner EICKHOFF. Mr. Hatch, will you take the stand?

I suppose that it is agreed that the witness returning to the stand need not be resworn?

Mr. MERRICK. As far as I am concerned; yes.

Mr. EDISES. Yes.

ROBERT IRVIN HATCH, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Direct examination by Mr. EDISES:

1125 Q. You understand you are under oath, Mr. Hatch?

A. Yes.

Q. When you were at the meeting at the Bellevue Hotel did any of the operators present ask any questions as to why the meeting was not being held at the ARTA hall or under the auspices of the ARTA?

A. I don't recall whether they asked that question that way or not. I believe it was brought up indirectly.

Q. Do you recall what was said in connection with it?

A. No; I do not.

Q. Was any provision made for taking a vote of the men who were not present at the meeting?

A. No.

Q. You have related certain grievances that you had against the union, or certain of the officials. Did you ever state those grievances on the floor at a meeting of the ARTA?

A. No.

Q. Did you ever try to?

A. No.

Q. Have you ever spoken to Mr. Rodman about the strike, or about the meeting at the Bellevue Hotel since the strike ended?

A. Yes; I must have; probably several times.

Q. When was the first time that you spoke to Mr. Rodman after the strike ended?

1126 A. I don't remember.

Q. Did you speak to him the day the strike ended?

Mr. MERRICK. Might I inquire whether this is relevant or not? It doesn't sound like it to me. What is it intended to develop?

Trial Examiner EICKHOFF. I suggest you lead the witness because I do not want to go through this hour by hour.

Mr. EDISES. Surely.

By Mr. EDISES:

Q. Mr. Hatch, did you inform Mr. Rodman as to what had taken place at the Bellevue Hotel?

A. No; I did not.

Q. Was anything said in your discussions or interviews with Mr. Rodman as to what took place at the Bellevue Hotel?

A. No; I don't believe I went into detail with Mr. Rodman at all regarding what happened at the Bellevue Hotel.

Q. Was it mentioned?

A. I don't recall any specific instance when I mentioned it. I merely assumed that I had mentioned it as a matter of course. I mentioned it to many people; Mr. Rodman probably was included.

Q. You say that you assumed that you mentioned it as a matter of course?

Trial Examiner EICKHOFF. He said that, yes.

A. Yes.

By Mr. EDISES:

Q. Do you know Mr. McDonough?

1127 A. Slightly.

Q. What is his job, or what was his job with ARTA?

A. With ARTA?

Q. With Mackay?

A. I don't know.

Q. What did you see Mr. McDonough doing around the office?

A. I don't recall seeing him doing much of anything.

Examination by Trial Examiner EICKHOFF:

Q. Was he an operator?

A. I don't know what his job was.

Q. You didn't observe him performing any functions around the H. B. office?

A. No. I had seen him around the office several times talking with various men, including myself. Whatever else he did, I don't know.

By Mr. EDISES:

Q. What did you talk to him about?

A. His chief topic of conversation with me was how the strike went in New York, and he attempted to explain to me one day why he was out here on the west coast, and his justification for being here; that he figured that the men in New York had been misled during the strike and that his intentions were to come out here and put the boys straight.

By Trial Examiner EICKHOFF:

Q. Whom did he represent in that respect?

A. He didn't state, didn't tell me who he represented;

1128 whether he was representing himself or who he might be representing. I took it, though, that he was doing that as a justification for his own personal actions during the strike; he was explaining his personal actions.

Q. When did he come out here?

A. He arrived—he was one of the bunch that came out on that plane.

Q. McDonough?
A. Yes.

By Mr. EDISES:

Q. Did he say that he was doing a kind of personnel work?
A. No, he didn't state what he was doing. He made no statement whatever. In fact, it is a mystery to me to this day exactly what he was doing out here.
Q. He did state that his job, or that he had come out here to help set the men right, set the men straight?
A. No, he didn't state his position at all. He merely made arguments, put forth arguments as to why he was justified in coming out here.
Q. And doing what?
A. Well, ostensibly he was out here to go to work as an operator, but as I said before, I didn't see him doing any operator's work. I don't know what he did aside from talking to myself and the men.

Q. Mr. Hatch, I would like to have you explain your refer-
1129 ence to setting the men straight. You made reference to setting the men straight.

A. He told me that he thought that ARTA was on the wrong track. He was one of the first members of the ARTA in the east and he had several grievances against them, notably the fact that one of the things that he mentioned was the fact that the boys in the New York office, 67 Broad street, were not allowed to choose their own representative at the conference with the company officials; that is, the negotiations.
Q. What did he tell you about the San Francisco situation?
A. He didn't tell me anything about it, excepting that he thought that the situation was very much the same out here that it was in New York. He gave that as his justification for coming out here.
Trial Examiner EICKHOFF. Did he come out as a strike breaker?
The WITNESS. I don't know; he didn't do any operating work like the other strike breakers.
Trial Examiner EICKHOFF. He came out with the other strike breakers?
The WITNESS. Yes.

By Mr. EDISES:

Q. I show you Board's Exhibit No. 13. Have you seen that before?
1130 A. (Examining Board's Exhibit No. 13). Yes, it has my signature on it.
Q. Do you know who prepared this?
A. No, I do not.
Q. When did you first see it?
A. I don't know when I first saw it. When I signed it was the first time I saw it.
Q. Who gave it to you to sign?
A. Mr. Spanover.

Q. What did Mr. Spanover say to you at the time that he gave it to you?

A. He didn't say anything, excepting that he wanted me to sign it. He said, "Read this over and sign it if you want to."

Q. What did you say to him?

A. I don't recall what I said to him.

Q. Did Mr. Spanover say that he had prepared it?

A. No, he didn't tell me who, and I didn't ask him.

Q. What happened to this paper after all the signatures had been put on it?

A. I don't know.

Q. Did you see Mr. Rodman's letter of appreciation in regard to the list that was posted on the bulletin board?

A. I don't——

Mr. MERRICK. (Interrupting.) It seems to me he should pro-
1131 duce the letter. This is the first mention of any such letter. What is the letter?

By Mr. EDISES:

Q. Did you see this letter?

Mr. MERRICK. This is still direct examination, you know.

By Mr. EDISES:

Q. Did you see any——

Mr. MERRICK. (Interrupting.) I object to the question unless he produces the letter.

Mr. EDISES. I am asking him if he saw it. I don't have to produce it to ask him that.

Trial Examiner EICKHOFF. I will permit it.

By Mr. EDISES:

Q. Did you see a letter or a note, or memorandum, from Mr. Rodman which stated, in effect that he——

Mr. MERRICK. (Interrupting.) I object to him stating the effect of the document.

Mr. EDISES. I am trying to give the substance of the document to help him identify it.

Mr. MERRICK. I object. It is an attempt to bring it in evidence through counsel's asking a question. It is highly improper.

Mr. EDISES. I am trying to——

Mr. MERRICK. (Interrupting.) I know what you are trying to do but I object to it.

Mr. EDISES. I am not interested in what you think I am trying to do.

Trial Examiner EICKHOFF. Now, Mr. Merrick, after all—
1132 I mean, Mr. Edises, if there is such a letter wouldn't it be better to produce it?

Mr. EDISES. Have you the letter, Mr. Merrick?

Mr. MERRICK. I don't know. What is the date of it?

Mr. EDISES. Will you find out?

Mr. MERRICK. This is hardly the time to ask counsel to produce something, in the middle of the trial. If you knew you were going to use it, why did you not ask me this morning for it?

Mr. EDISES. Perhaps you have it among the voluminous papers you have.

Mr. MERRICK. Possibly so, but I don't think so. I suggest, in order to save time, that I will endeavor to produce it this afternoon.

Mr. EDISES. May I be permitted to indicate the contents of the letter in order to ask him a question as to whether he has seen it, Mr. Examiner?

Trial Examiner EICKHOFF. Do you want to prove the existence of such a letter through this witness?

Mr. EDISES. If it can not be produced in any other way.

Trial Examiner EICKHOFF. Maybe it can be produced in some other way. You want to bring out there was such a letter, don't you?

Mr. EDISES. Yes.

Mr. MERRICK. Mr. Rodman is the man to bring that out through, if you say, he signed it.

1133 Trial Examiner EICKHOFF. Do you recall a letter of appreciation from Mr. Rodman?

The WITNESS. I don't remember seeing such a letter. If there was such a letter on the bulletin board where the operators would see it, I wouldn't see it because I seldom get down there.

Trial Examiner EICKHOFF. The fact is that you didn't see any such letter?

The WITNESS. No.

By Mr. EDISES:

Q. You saw Mr. Spanover circulating this letter among other operators, did you not?

(Referring to Board's Exhibit No. 13.)

A. Yes.

Q. About how much time was occupied in circulating it?

A. I have no idea. I didn't follow his movements except to see him take it to another man after he finished with me.

Q. You saw it on more than one day?

A. No; the only time I ever saw it was when Mr. Spanover brought it to me and then he took it to the next man and I never saw it before or since.

Q. Do you know whether Mr. Spanover was on duty at the time?

A. I don't know positively. I assumed that he was.

Q. Do you know what his hours are?

A. He generally works days and I don't know the exact hours.

Q. What time was it when you saw him circulating it?

1134 A. Some time during the middle of the day: probably around—I couldn't say—either in the forenoon or early afternoon.

Q. Did you see Mr Jorgensen present at any time while Mr. Spanover was circulating the letter?

A. I didn't notice whether he was present or not.

Q. Were you present at a meeting in the Postal clock room on October 10th at a meeting of the H. B. employees?

A. No.

Q. Did you hear that there was to be such a meeting?

A. Yes.

Q. Who told you about it?

A. I personally wrote out the notice to the fellows that there was to be such a meeting.

Trial Examiner EICKHOFF. What was the purpose of that meeting?

The WITNESS. Mr. McDonough, as I said before, was trying to explain to me why he came out here and how the strike went in New York, and so forth.

I told him that I wasn't particularly interested; that I was finished, as far as any organization was concerned, and if he wanted to tell the men about it that I would go with him to the extent of writing out a notice and trying to arrange a place for them to meet together so that he could give them his spiel.

Aside from that I had nothing to do with that meeting.

1135 By Mr. EDISES:

Q. Who did you ask for permission to use the Postal clock room?

A. First of all I will relate exactly what happened.

Q. Will you please answer my question first?

A. Who did I ask?

Q. Yes.

A. I asked Mr. Hodges.

Q. Who is he?

A. Mr. Rodman's assistant.

Trial Examiner EICKHOFF. Then you secured consent?

The WITNESS. Mr. Hodges arranged with the man who is in charge of that room for us to use it for that purpose.

By Mr. EDISES:

Q. Do you want to go ahead and tell about it?

A. Yes.

Trial Examiner EICKHOFF. I don't know that I want to allow voluntary evidence here.

Mr. EDISES. Then I will just ask specific questions.

Trial Examiner EICKHOFF. Let the testimony be responsive to questions.

Mr. EDISES. Surely.

By Mr. EDISES:

Q. Did you speak to anyone else, other than Mr. McDonough, about this meeting before it was held?

1136 A. Yes; I went around the office and asked the fellows what they thought about such an idea. I don't remember exactly who I asked, but it semed to me like everyone was

curious to know; they were buzzing with excitement, and so forth, after the strike and it seemed to me like a good idea for the fellows to get together and blow off steam, so to speak.

Q. Did you tell them the purpose of the meeting?

A. In the little note that I sent around.

Q. Have you that?

A. No, but I think I can quote it verbatim.

Q. Do that.

A. "An informal meeting will be held in room"—I have forgotten the number—"the Postal clock room"——

Q. (Interrupting.) That is in the Mackay Building?

A. Yes. "—at 4 p. m. today. Everyone is invited to attend."

Q. Is that all?

A. No. Then a period. "The men from New York will probably tell what happened back there during the strike.

"There has also been some talk about the appointment or election"—I am not sure—"of a Relations Committee. This matter may be discussed at this meeting."

Q. How many men did you speak to concerning the meeting, approximately? Did you speak to most of the operators in the operating room?

1137 A. No. Most of them were busy at the time. I spoke to those that happened to be free at the moment. Maybe I spoke to three or four.

Q. What did you do with the notice?

A. I made, perhaps, a dozen carbon copies of the notice and went around to all the fellows and just handed it to them and asked them to pass it on so everyone would see it.

Q. Where did you prepare those carbon copies?

A. I prepared them at my desk.

Q. At your desk?

A. Yes.

Q. Were you on duty at the time?

A. Yes.

Q. Had you spoken to the company, or any of the company officials, about this proposed Relations Committee with the company?

A. No.

Q. Well, where did you get the idea?

A. I got that from McDonough.

Q. McDonough suggested it?

A. Well, he said that seemed to be a good idea to him, and that it worked out in New York successfully; and that was his idea of the thing.

Q. Was this Relations Committee to have anything to do with ARTA?

1138 A. No; just the employees of the H. B. office.

Trial Examiner Eickhoff. Do you know why McDonough singled you out to cooperate with him in calling this meeting?

The WITNESS. Yes; I can understand that. My time there is largely my own. In other words, I am not tied down to any routine task. Unless there is an emergency on, why I can take time out occasionally. I had my corner down there, and he came down and talked to me. I don't know why he particularly singled me out, excepting for that reason.

Trial Examiner EICKHOFF. Had you had any earlier discussions together which showed you were sympathetic?

The WITNESS. No; none at all.

By Mr. EDISES:

Q. Then did you talk to any other official of the company other than Mr. Rodman's secretary, in regard to the meeting?

A. You mean Mr. Hodges?

Q. Yes; did you speak to any other official other than Mr. Hodges?

A. Yes. After I had prepared these notices, I had no authority to go ahead and call a meeting or say that any such a meeting would be permitted. So I went to Mr. Jorgensen and showed him the notice that I had prepared and asked him if it would be all right to circulate them among the fellows; and also whether it would be in order for me to try to arrange to get a room to hold the meeting in, inasmuch as the regular locker room where the fellows ordinarily met was much too small.

1139

Q. Yes. And did he say anything else?

A. He said no; he saw no objection.

Q. And did he tell you that Mr. Hodges would be the person to see about getting the room?

A. Not at all. I took it upon myself to see Mr. Hodges.

Q. Now, what were your hours on that day?

A. You mean, what hours was I present there?

Q. No; what hours were you supposed to work that day?

A. As I remarked before, I am not supposed to work any particular hours. I can work any hours I choose.

Q. You called the meeting for four o'clock. Some of the men, consequently, were still supposed to be on duty at that time, and after that time, were they not?

A. Oh, yes.

Q. How did you arrange to get those men off duty in order to attend the meeting?

A. I didn't arrange anything; my part, after writing the notice and arranging for the room, was finished.

Q. Who took care of getting the men off work in order to attend the meeting?

A. I don't know. I didn't follow the progress of the meeting. I had spent considerable time preparing these notices and making arrangements for the room and I was catching up on my own work after four o'clock. I paid no attention to the procedure.

1140

Trial Examiner EICKHOFF. Do you know whether or not any of the men attended this meeting during their trick?

The WITNESS. I don't know definitely, but I assume that they did. How that arrangement was taken care of, I have no knowledge.

Mr. MERRICK. I am willing to stipulate that some of them attended during their tricks and they weren't docked for their time they used in attending the meeting.

Mr. EDISES. So stipulated.

Mr. MERRICK. Stipulated.

By Mr. EDISES:

Q. Did you attend the meeting?

A. No.

Mr. MERRICK. He said that before.

By Mr. EDISES:

Q. By the way, do you know whether a Relations Committee was formed as a result of the meeting?

A. I know quite definitely there was not.

Q. Have there been any other meetings similar to this one held?

A. I believe not; none to my knowledge.

Mr. EDISES. That is all, Mr. Hatch. Thank you.

Trial Examiner EICKHOFF. Just a minute, for cross examination, Mr. Hatch.

Mr. EDISES. May I ask one further question, Mr. Merrick?

1141 Mr. MERRICK. Surely.

By Mr. EDISES:

Q. Mr. Hatch, how often are you paid?

A. Twice a month.

Q. On what days?

A. I believe the official pay days are on the 19th of the month and on the 4th of the month. Usually we are paid a day or so in advance; not always.

Q. Do you receive a pay check—did you receive a pay check on the 19th of October?

A. I don't remember that.

Mr. MERRICK. Just state what you are after and I will probably stipulate to it.

Mr. EDISES. Will you stipulate Mr. Hatch was not docked in pay at any time during the strike?

Mr. MERRICK. You mean he was paid for the days he was out on strike?

Mr. EDISES. Yes; when he didn't work.

Mr. MERRICK. No. He was docked the same as every other man was for the time that he was not at work.

Mr. EDISES. You didn't seem very positive of it when you first stated it. Do you know that of your own knowledge?

Mr. MERRICK. No; no.

Trial Examiner EICKHOFF. Just a minute, Mr. Counsel, you have a witness on the stand.

Mr. EDISES. Will you have any objection to presenting
1142 the cancelled checks that Mr. Hatch received for that period?

Mr. MERRICK. No.

Mr. EDISES. If Mr. Jorgensen will state he was docked, I will take his word for it.

Mr. JORGENSEN. Sure, all the men were docked.

Mr. EDISES. Then I will drop that point.

Trial Examiner EICKHOFF. Mr. Jorgensen is not on the stand.

Mr. EDISES. That is all, thank you, Mr. Hatch.

Are you going to cross-examine Mr. Hatch?

Mr. MERRICK. Yes.

Mr. EDISES. I might state that I would like to have Mr. Spanover next.

Mr. JORGENSEN. I will call him.

Cross-examination by Mr. MERRICK:

Q. Mr. Hatch, the subject of your compensation having been brought up, what is it you are paid?

A. You mean my monthly salary?

Q. Yes.

A. $175.00 a month.

Q. Do you think that is adequate salary for anyone doing the work that you do?

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Are you satisfied with that salary?

1143 Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. I will allow it.

A. No; I am not.

By Mr. MERRICK:

Q. Have you ever made any complaint to the company in regard to your salary?

A. Yes; I have.

Q. Has it ever been adjusted to your satisfaction?

A. No; it has not.

Q. Did you make the complaint before the strike?

A. Yes.

Q. And nothing was done about it?

A. No.

Q. Did you have rather strong feelings about it, that you were not being paid a fair compensation in relation to the pay that was given other men in the office?

Mr. EDISES. I object to that line of questions.

Mr. MERRICK. I want to develop he is a hostile witness.

Mr. EDISES. Go ahead, by all means.

Trial Examiner EICKHOFF. This is cross examination, and I think that line has gone about far enough. I do not think it came up on direct.

Mr. MERRICK. I would like to ask if Mr. Wagenet will assure this witness that if he makes any statement showing hostility toward the company that will give him the same assurance that he gave
1144 Mr. Henderson after he appeared on the stand, that is, that the Board will take care of him, and to let him know, in case the company ever complains to him about the testimony he has given on the stand?

Trial Examiner EICKHOFF. Your question is entirely improper and will be disallowed.

Mr. MERRICK. I object to the characterization of it as improper, since Mr. Wagenet did that to a witness immediately after he left the stand.

Trial Examiner EICKHOFF. I don't know as there is anything in the record to that effect.

Mr. MERRICK. I am putting it in.

Mr. EDISES. I move that statement be stricken from the record.

Trial Examiner EICKHOFF. It will stand as to what took place here. Any reference of that sort is highly improper.

Mr. MERRICK. Mr. Examiner, I think that conduct was highly improper and has a direct bearing on the way this case is being conducted.

Mr. EDISES. I object to that statement and I object to Mr. Merrick getting that material in the record.

Trial Examiner EICKHOFF. It is only in the record as his statement.

Mr. MERRICK. I object to it because it indicates the attitude in which this case is being conducted by the Regional representa-
1145 tive of the National Labor Board; that he came over and spoke to a witness shortly after he left the stand, and in front of me and the other representatives of the respondent, and put his arm around the witness and said, "Now, if any of the company officials say anything to you about your testimony here, you just come and let me know, and don't you worry, we will take care of you."

Trial Examiner EICKHOFF. Will you please discontinue your statement? If you go any further I will ask the reporter not to take what you say. If you have any evidence to introduce in the case you may produce it. It may be admitted, and may not be.

Mr. MERRICK. That is all I have to say on that subject then.

By Mr. MERRICK:

Q. Mr. Hatch, you were shown minutes of the meeting, I think it was September 13th, of ARTA, already in evidence, and it appeared that you had signed a sheet that was annexed to those minutes. That is correct isn't it?

A. Yes.

Q. Expressing your approval of a certain resolution that was adopted at the meeting?

A. Yes.

Q. Do you remember whether you signed that at the H. B. office?

A. Yes; I do remember signing it at the H. B. office.

Q. While you were on duty?

1146 A. Yes.

Q. To your knowledge did other employees of the H. B. office also sign that while on duty? It was circulated around the office?

A. Yes.

Q. And wasn't it the practice, as far as you know, to circulate the literature of the union around the office during the regular hours of employment?

A. Yes.

Q. You don't know of any time at which Mr. Jorgensen objected to that being done, do you?

A. No, I do not.

Q. Or any time Mr. Jorgensen objected to any petition prepared by the union being circulated around the operating room, do you?

A. No.

Q. What, as you understand it, was the purpose of calling a strike against the Mackay Radio?

A. I believe that the final reason for calling a strike against Mackay Radio was because they refused to sign a contract with ARTA, an exclusive agreement.

Q. Is it your understanding that they presented a document of considerable length, and presented it to the company on a take-it-or-leave-it basis, and when they refused to sign the exact document as presented, that the strike was called?

1147 A. No, I have no understanding about that. In fact, I don't know the circumstances under which the document was presented to the company.

Q. All you know is that the strike was called, following the adoption of these resolutions at the September 13th meeting?

A. Yes.

Q. You have said something about your duties at the H. B. office. Can you characterize them more fully? What is it that you do?

A. Perhaps I had better give you a little history of what I have done since I arrived in the office. My first position in the H. B. office was as a member of the engineering department and——

Trial Examiner EICKHOFF. I do not think that will be responsive to the question.

Mr. MERRICK. I have no objection to his answering.

Mr. EDISES. Then I object. I suggest that the answers be responsive.

Trial Examiner EICKHOFF. There is no objection to the question. The question is all right but I don't want to launch into another history. We are getting too much of that.

Mr. MERRICK. Then I do hope the Examiner will be as interested in excluding the same thing on direct as he is on
1148 cross.

By Mr. MERRICK:

Q. Make it just as brief as you can, Mr. Hatch.

A. Stated very briefly, I am sort of an intermediary between the traffic and the engineering department. Part of my duties are of a traffic handling nature, such as the making of the best use of the facilities that we have for handling traffic. The other half of the job is to confer with and advise the engineering department regarding what equipment changes might be necessary and assist them in making those changes to facilitate the handling of traffic.

Q. Have you any jurisdiction over the operators or anybody in the operating room?

A. No.

Q. Do operators receive more or less pay than you?

A. Operators with the same rating receive more.

Q. That is, the Class A operators?

A. They receive more.

Trial Examiner EICKHOFF. What professional qualifications have you, if any?

The WITNESS. No formal education. I have been in the technical branch of radio for many years; more than twenty years.

Trial Examiner EICKHOFF. In the engineering end?

The WITNESS. In the installation, maintenance, and develop-
1149 ment of radio equipment, as well as operating.

By Mr. MERRICK:

Q. Mr. Hatch, I think that Mr. Rone, who appeared as one of the prior witnesses for the Board in this proceeding testified to a certain conversation that he had with you in regard to going down to Palo Alto, I think it was, or to the Lobitos station, for the purpose of committing acts of sabotage. Do you remember having any such conversation with Mr. Rone?

A. I don't remember having—no, I don't remember specifically having such a conversation with Mr. Rone.

Q. Did you at any time offer to transport anyone to either of those stations for the purpose of committing acts of sabotage?

A. No.

Q. Did you hear anyone discussing going to either of those stations for such a purpose, that is, aside from this jocular suggestion that you said you made?

A. No. I was about to remark that, aside from that poor joke of mine regarding blowing up the station, that I didn't hear any such discussion.

Q. And so far as you know, nothing was done to attempt to commit acts of sabotage?

A. No.

Q. Did the company, or any official of the company, ever
1150 suggest in any way, or request you to make this suggestion to some of the union men, that they go and commit acts of sabotage?

A. Positively not.

Q. Did you hear any discussion at any time among the union members, about going down to Mills Field and meeting the men that were coming in by airplane from New York on the morning of Tuesday, October 8th?

A. I heard no discussion among the members.

Q. You heard something about it?

A. Yes; I did.

Q. Did you understand that it was seriously being considered, that is, the sending of someone down to Mills Field to prevent these men from being able to work?

A. Yes.

Trial Examiner EICKHOFF. How did you come by that understanding?

The WITNESS. I would prefer not to answer these questions, Mr. Examiner.

Mr. MERRICK. Mr. Hatch, I think that the Examiner may excuse you from mentioning any names, but can you not speak rather definitely, state something more definite about it, and we will ask him to excuse you from mentioning names?

Mr. EDISES. We have no objection to his naming names.

Mr. MERRICK. He has himself.

Mr. EDISES. I was required to have my witness specify
1151 names. Why not?

Mr. MERRICK. Let's not go into that point again.

A. Yes; I was invited to take my car down to the airport to assist in the transportation of men, paid thugs, to stop the men from New York.

By Mr. MERRICK:

Q. And you were asked by a member of ARTA to do that?

A. Yes.

Q. Did you go?

A. No.

Q. Do you know whether anyone did go?

A. No; I do not.

Trial Examiner EICKHOFF. We will have a recess until 10 minutes after eleven.

(At this point a recess was taken after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. You may proceed.

By Mr. MERRICK:

Q. Mr. Hatch, several references have been made to your conversation on the telephone with Mr. Jorgensen somewhere around 3

o'clock on the morning of Saturday, October 5th. I would like to have you repeat, as accurately as you can, just what Mr. Jorgensen said and what you said in that conversation. Mr. Jorgensen called you, is that right?

A. Yes. As I recall it, I answered the tel phone about a quarter of three that Saturday morning. M. Jorgensen told
1152 me that all of the men had walked out on strike at midnight and he wanted to know if I would come down to work.

As I recall it I said, "No, you are kidding," or words to that effect.

He said, "No, it is the truth."

So I said, "Jorg, I am a member of the union and, as such, I cannot possibly come down to work when the rest of the boys are out on strike; and if I were not a member of the union I couldn't come down unless it was necessary for me to be there in order to protect the company's property."

Then he said, "Well, give me a call in the morning."

That is all there was to it.

Q. That is all that you can recall of that conversation?

A. That is all as far as I know, that was said.

Q. You are quite sure that was all?

A. Yes.

Q. Did you call Mr. Jorgensen in the morning?

A. No, I did not.

Q. Did you make any offer to return to work until the morning of Tuesday, October 8th?

A. No, I did not.

Q. Do you know what attitude, what the attitude of company officials was toward you, by reason of your failure to stay on duty during the strike?

Mr. Edises. I want at this time, Mr. Examiner, to ask
1153 whether or not, in view of what has been brought out in regard to this witness' actions, and his behavior and his attitude, and his relationship with the company, his reactions to my examination and to Mr. Merrick's, whether he ought properly to be the subject of cross examination by Mr. Merrick.

Trial Examiner Eickhoff. Why certainly. If you can impeach the witness or disprove any of his statements or anything of that sort, you are at liberty to do so; but I cannot cut off the examination on such ground.

Mr. Edises. Is it the Examiner's opinion that the witness is not a hostile witness, as far as the Board is concerned?

Mr. Merrick. The question really isn't at issue at the present time.

Trial Examiner Eickhoff. The respondent has the absolute right to cross examine the witness. There is no question about that.

Mr. Edises. On that basis, namely, that he has an absolute right, quite apart from the question of the friendly or hostile attitude of the witness, I shan't make further objection.

Trial Examiner EICKHOFF. Even if you had established the witness as a hostile witness, I think the rule would be the same, that they have a right to cross examination.

1154 Mr. EDISES. My object in making it is that inasmuch as we ought to try to see the realities of the situation, in a hearing of this kind, that permitting Mr. Merrick to cross examine him and lead the witness can have only one obvious effect, namely, to bring out the sort of thing that Mr. Merrick wishes to have the witness bring out.

Trial Examiner EICKHOFF. After all, I think, after you think it over, you will conclude that it is not a very good argument.

Mr. EDISES. Well, I shan't enter any further objection to his cross examination.

Trial Examiner EICKHOFF. We can not do any crystal gazing here. We have got to try this case by evidence.

Mr. EDISES. Very well.

Mr. MERRICK. Do you remember the last question?

The WITNESS. I am afraid I don't.

(The question referred to was read aloud by the reporter as above recorded.)

A. No, I do not definitely know. I assumed, though, their attitude towards me was the same as towards any of the others who went out on strike.

By Mr. MERRICK:

Q. Except you know that whereas there were a good many operators, there was only one chief electrician, isn't that so?

A. Yes, that is true. My case was more or less a special

1155 one.

Q. At least it is a fact, is it not, Mr. Hatch, that there weren't any specially friendly relations between you and the company, that is, more friendly than there were between the company and other employees who had gone out on strike?

A. No, there were no such friendly relations, exceptionally friendly relations.

Q. And prior to the strike did you consider yourself to be on any more friendly terms with the officers of the company than many of the other men in the H. B. office?

A. No.

Q. You testified to having had one or more meals with Mr. Jorgensen. What restaurant did you say they took place at?

A. Ordinarily Mr. Jorgensen and I had breakfast at about the same time every morning in Foster's, Market street near Battery.

Q. Over what period of time did you customarily breakfast together?

A. Practically ever since I have been there.

Q. Were you usually alone, you and Mr. Jorgensen?

A. Yes, usually. Occasionally there were others from the office present and we all breakfasted together.

Q. As far as you know, did Mr. Jorgensen ever single you out especially for the purpose of having breakfast with you?

A. I know that he did not.

1156 Q. Isn't it a fact that Mr. Jorgensen frequently ate there and conversed with whatever men from the H. B. office happened to be present?

A. That is correct.

Q. When did you first definitely decide that your interests would best be served by returning to work, rather than continuing with the strike?

Mr. EDISES. May we have that question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.)

A. [Pause.]

By Mr. MERRICK:

Q. To help you answer that question, had you come to that decision on Saturday, October 5th?

A. No; I had not.

Q. On Sunday, October 6th?

A. No.

Q. In fact, you were engaged in certain activities on October 6th that were very much concerned with carrying on the strike, were you not?

A. That is right.

Q. I think you testified that at Sunday night you were going with some others to call on the men that had come up from Los Angeles?

A. Right.

Q. For the purpose of attempting to persuade them to return to Los Angeles?

1157 A. That is right.

Q. And you were accompanied at that time by whom, did you say?

A. I was not accompanied by anyone. I was on my way to meet these men.

Q. Who were they?

A. At the hotel.

Q. Who was to meet you there?

A. Mr. Rone and Mr. Loudermilk.

Q. And the three of you together were to attempt to persuade the men to return to Los Angeles?

A. That is right.

Q. On Monday, October 7th, were you still with the strike?

A. Yes, indeed.

Q. And in the afternoon?

A. Yes.

Q. That is—Then it was in the evening of October 7th that you first decided that something should be done about going back to work, even though the leaders of the strike wanted to continue the strike?

A. Yes.

Q. Was your attitude on this point in any way induced as a result of any conversations you had had with any officers of the respondent, directly or indirectly?

A. No.

1158 Trial Examiner EICKHOFF. How about the conversation with Mr. Dewey?

The WITNESS. That had no influence, excepting to confirm my opinion that the strike was ill-advised.

By Mr. MERRICK:

Q. That was solely by reason of information he gave you in regard to the situation in New York?

A. Correct.

Q. Have you now any reason to doubt the accuracy or the information that Mr. Dewey gave you as to the men returning to work in New York?

A. No; I know his information was absolutely correct and true.

Q. In connection with your participation in the calling of the meeting at the Bellevue Hotel on the night of October 7 to 8, did you have in mind by that meeting, taking any action to weaken or destroy the union?

A. No; quite the contrary. It appeared to me that the men in the H. B. office, rather, the morale of the men in the H. B. office was badly shattered and that if we held a meeting in which a definite decision was made, that the men would act as a unit rather than take independent action.

Trial Examiner EICKHOFF. You knew for the men to return to work before the union had acted to call the strike off, would hurt the union, didn't you?

The WITNESS. Yes; indeed I did. The object of this
1159 meeting was to let the men concerned decide in a body whether they were going to stay out and forget about sneaking in one by one, or whether they were to go back to work as a unit.

By Mr. MERRICK:

Q. Did you also feel at that time that if the strike continued, and the company succeeded in bringing in other men to take the places of the men on strike, and these men, consequently, were not returned to their positions, that the union would also be weakened by that?

A. I was sure of that.

Q. And you had reason to believe at that time that unless the men did go back to work very soon, the company would replace them with other men and their positions would be permanently lost?

A. Yes.

Examination by Trial Examiner EICKHOFF:

Q. Where did you learn that?

A. Well, I had positive first hand knowledge that there were a large number of men working in the office; that the New York office

was operating full staff, that there were men on the way here from the east that were to arrive that Monday morning, and unless the men who belonged in this office got back on the job their places would be taken, possibly permanently.

Q. Did you know to what extent the company would replace the strikers?

1160 A. I believed that the company was prepared to close out some of their non-essential circuits and maintain only those which they considered to be essential in order to win the strike.

Q. To such an extent that these men would not be needed?

A. They would not be needed.

Q. Where did you get that information?

A. Well, I reasoned that out. The situation was obvious to anyone who understood the setup.

Q. That is a conclusion. You said you knew positively.

A. I knew positively they were bringing in men and they had already had men on the job.

Q. But you didn't know positively just how far that would go?

A. I had very good reason for believing that.

Q. That is what I am trying to get at, what were your reasons?

A. In order to explain that, Mr. Examiner, I would have to explain the whole setup of the International system. The fact that——

Mr. EDISES. (Interrupting.) I object to him explaining the whole setup of the International system in order to answer.

By Trial Examiner EICKHOFF:

Q. Let me put it this way: Is your knowledge just based on reason from various circumstances, or had somebody in the company,

1161 or someone else, told you definitely that they were going to do this?

A. No; no one had advised me definitely. It was simply I was familiar with the setup, the communications setup and I knew that that would be the thing that the company would do.

Q. That was your conclusion?

A. That was my conclusion; yes.

By Mr. MERRICK:

Q. How many men had come up from Los Angeles, do you know?

A. I don't know exactly how many.

Q. Did you know at that time whether or not the strike was effective in Los Angeles?

A. I knew that it was not effective in Los Angeles.

Q. Did you know whether or not it was effective at the Juniper station, the Rockland, Main, station, the New Orleans station, and other stations of Mackay Radio?

A. As I previously testified, when I was on my way up to meet Mr. Loudermilk and Mr. Rone on Sunday evening, I believe it was, I met Mr. Rodman on the street. He showed me a telegram which he had received from Mr. Stone, stating that those stations had not gone on strike. Aside from that I had no information.

Trial Examiner EICKHOFF. Which stations, the ones just mentioned by Mr. Merrick?

The WITNESS. Yes, Rockland, Juniper, and the others mentioned.

By Mr. MERRICK:

1162 Q. Did Mr. Rodman tell you that Mr. Stone had informed him on Sunday that he was prepared to send as many men on from New York as necessary here in San Francisco?

A. No; he didn't tell me that.

Q. Did you, in the listening in that you did with your set at home, did you hear any information to that effect being transmitted from Mr. Stone to Mr. Rodman?

A. No; I did not.

Q. From your knowledge of the number of radio operators available in the United States, did you believe that sufficient men could be brought to San Francisco to take the places of those who had gone out on strike here?

Mr. EDISES. I object to that question on the ground that it would be impossible for him to know the number of radio operators in the United States.

Mr. MERRICK. There is certain information published regularly in the union magazine, "ARTA," on the number of men available and on assignment. If he read that he would have some knowledge of the subject.

Trial Examiner EICKHOFF. I will allow the question.

A. I don't believe that it would have been possible to man all of the circuits, including the coastwise circuits, but it would have been possible and quite easy to man all of the essential circuits, namely, the trans-Pacific and the transcontinental.

By Mr. MERRICK:

1163 Q. And these coastal circuits, you say the company might abandon in case of necessity in order to break the strike?

A. Yes.

Q. And why did you consider those less essential than the trans-Pacific and the transcontinental circuits?

A. Because the International system has the Postal Telegraph Company, who could very easily handle that traffic without overloading their facilities.

Q. And their operating rooms are in the same building with those of Mackay Radio?

A. Yes.

Q. Did Mr. McLaughlin, or Mr. Spanover, or Mr. Burtz, ever try to persude you to break the strike or take action to break the strike, or to break the union, I mean, break the union?

A. No.

Q. Did you ever have any discussion with those gentlemen in regard to an attempt to break the union?

A. No.

Q. What are your duties in connection with the ordering of supplies?

A. I submit requisitions for things which have to be purchased in the east.

Q. To whom did you submit them?

1164 A. To Mr. Jorgensen.

Q. Have you any authority to purchase equipment without Mr. Jorgensen's approval?

A. No.

Q. In your conversation with Mr. Bash, in the early morning of Tuesday, October 8th, I think you testified it was somewhere between 1:00 and 1:30 a. m., did you tell him that the eleven men whose names Mr. Jorgensen had struck out on this list he had given you, were not to be allowed to attend the meeting?

A. No; I did not.

Q. Or, if they did attend they would not be allowed to vote?

A. No; I never told him that at all.

Q. Before the meeting was actually convened at the Bellevue Hotel, did you talk over the telephone with anyone who was at ARTA hall when he was talking to you?

A. No.

Q. You said that Mr. Bash talked with you, you think, from Mr. York's house. Is that what you said?

A. Yes; in Marin County.

Q. And Mr. York attended the meeting at the Bellevue Hotel?

A. Yes.

Q. Has anyone ever complained to you, that is, any of the men, about not being notified of the meeting that you held of the H. B. office men?

1165 A. No.

Q. Anyone ever express disapproval of the action taken at that meeting, or dissatisfaction with it?

A. [Pause.]

Q. Aside from the five complainants in this proceeding?

A. No.

Trial Examiner EICKHOFF. You heard one or more of the complainants in this proceeding complain at the time of the meeting, didn't you?

The WITNESS. Yes.

By Mr. MERRICK:

Q. That is, complained that the other men had not been notified of the meeting?

A. No; I didn't intend to convey that. They complained about the meeting in its entirety; they didn't approve of the meeting, or the action that had been taken.

By Mr. MERRICK:

Q. Did Mr. Jorgensen at any time urge you to take any definite action at this meeting at the Bellevue Hotel, or indicate that he hoped action would be taken at that time which would destroy the influence of the union with the H. B. men?

A. No. Quite the contrary; it was agreed that we were not to try to influence the men's vote at all at the meeting. He was merely to state the company's position in case the men wanted to return to work.

Q. What was the purpose in having Mr. Jorgensen present
1166 at this meeting?

A. To state the company's position.

Q. But you knew the company's position, so why did you need him?

A. I didn't believe that my unsupported statement would bear much weight; that he would have to be there in person in order to——

Q. (Interrupting.) That is, he was there simply for the purpose of assuring everyone present of the accuracy of the statement that you made?

A. That is right.

Q. Namely, that the men could come back to work and there would be no discrimination made or punishment meted out by reason of their having been on strike?

A. Yes.

Q. Is that right?

A. That is right.

Examination by Trial Examiner EICKHOFF:

Q. Mr. Hatch, Mr. Jorgensen told you that the men whose names he checked off would not be re-employed unless they filed applications which were subsequently favorably acted on in New York?

A. No. That is not strictly true. What he stated was that those men whose names he read from the list, their applications would
1167 have to be approved by Mr. Stone; but it didn't necessarily mean that they would not be re-employed.

Q. Isn't it a fact that you didn't go out of your way to notify those men of the Bellevue meeting because you felt they would not be re-employed?

A. No, that wasn't the reason. The reason why I didn't notify those men is because I knew that if they were present there would be a lot of argument as to whether they should take a vote with these men present. The men that were present at the meeting should be left free to voice their opinion without argument.

Q. Didn't you think that those men should be informed that they could go back to work if they filed application?

A. Yes, they should have been informed to that effect.

Q. And you still say——

A. (Interrupting.) I was under the impression they were so informed.

Q. But you didn't feel that Mr. Jorgensen should give them that information at this meeting at the Bellevue?

A. Oh, yes. In fact I had the impression——

Q. (Interrupting.) I mean, you didn't feel that they should be summonsed to the meeting so Mr. Jorgensen could give them that information?

A. No, I didn't. In fact, I didn't give that angle of it any thought at all. The only thing occurred to me, in not deliberately tele-
1168 phoning these men, was the fact that their presence would be more or less embarrassing to the others who were to vote on going back, knowing that these men were more or less of a cloud, so to speak.

Q. And your testimony is that you didn't think that these men were in a hopeless situation?

A. No.

Q. Merely that they might impede the proceedings in some way?

A. That is right.

By Mr. MERRICK:

Q. Do you know whether or not it is true, Mr. Hatch, that all of the men who came back were accepted in the order in which they applied for re-employment?

A. I have no knowledge about that.

Q. Do you know of any case in which any special exception was made, or anyone treated in any different way than any other one, except that was based on the order in which they applied for re-employment?

A. I know of no special case, one way or the other; in fact, I have no knowledge of it.

Q. Do you know the men on that list that were present at the meeting, and came down to the office afterwards, were immediately put to work?

A. I know of one particular case, yes; that of Sam York. That is the only one that I have first hand knowledge about.

Q. And that he filed the same kind of an application for re-employment that the five complainants in this proceeding did?

1169 A. As far as I know; yes.

Examination by Trial Examiner EICKHOFF:

Q. Mr. Jorgensen took the trouble to come up to Bellevue Hotel to inform the men at that meeting that they would be re-employed if they came right back to work?

A. Yes; if they came back in a body. That was the stipulation, that they must come back in a body.

Q. Do you known whether or not Mr. Jorgensen, or anyone else in the company, notified these men, whose names had been checked off, the terms on which they might apply, or what the situation was with respect to them?

A. I believe most of those men were present and a stated his position to them. He might have made some additional explanation to them in private; I don't know.

Q. I am asking you what you know.

A. No; I don't know.

By Mr. MERRICK:

Q. Do you know whether the company, through Mr. Jorgensen or otherwise, made a special attempt to notify the other employees of the H. B. office that were not at this meeting and were not on the list of eleven?

A. I have no knowledge concerning that. I do not know.

Q. How many were present, did you say, at the meeting?

A. There were 36.

Q. And do you know what is the approximate total number
1170 of men employed at the H. B. office?

A. It would be a wild guess; I don't know exactly.

Q. I think it appears from the exhibit in evidence that there are 68.

A. Yes.

Q. Do you know any instance in which the company tried to notify any one of those 41 or 42 people that weren't there at that meeting as to the result of the meeting, and that the company was willing to take them back?

A. No, I have no knowledge about what action the company took after the meeting.

Examination by Trial Examiner EICKHOFF:

Q. However, you had attempted to reach all of them and notify them of the meeting?

A. Yes.

Q. And about how many of them did you reach before the meeting?

A. I personally reached about 18 or 20, I believe.

Q. And you asked——

A. (Interrupting.) Mr. Burtz handled the rest. Quite a number of the men had no telephones at all. All we had was the street address, and Mr. Burtz and the others went out in their automobiles and rounded them up. Some of the men were not at home and couldn't be reached, or their address hadn't been kept up to
1171 date or they had moved or something, and could not be reached.

Q. But it was a part of your plan to try to reach everybody on the list with the exceptions noted, telling them of this meeting?

A. Yes.

By Mr. MERRICK:

Q. Did Mr. Jorgensen request, or in any way insinuate that he desired that you should not notify the eleven men of the holding of this meeting?

A. No, he had no suggestion to make in regard to those men, as to what we should do.

Q. Did you and Mr. Burtz assume full responsibility for the calling of this meeting and the conduct of the meeting?

A. Yes——

Mr. Edises. (Interrupting.) I object to that as calling for a conclusion. The facts are in evidence.

Trial Examiner Eickhoff. Overruled.

By Mr. Merrick:

Q. Did you answer?

A. Yes, I assumed full responsibility for my part.

Q. And as far as you know, the meeting was a meeting called by the H. B. office employes and for them, and them alone, and was not subject to any influence by the company?

A. That is correct.

Q. We had considerable discussion yesterday afternoon as to what you understood to be the effect of the resolution that was
1172 passed at the September 13th meeting. I think you said that your understanding was that that resolution merely meant that those who approved it at the meeting, or subsequently, were in favor of tying up their destinies with the marine men, that is, that the point to point men would stand with the marine men as far as making demands on the company was concerned; is that right?

A. That is right, and that a dead line be set for a certain, after which no further attempt at negotiations would be made.

Q. And you understand that after the expiration of that dead line, if the two agreements had not been signed, that there would be a vote taken as to whether or not you would call a strike and try to compel the company to sign those agreements?

A. That was my understanding.

Q. Do you know whether any other employes of the H. B. office, who were either present at that meeting or indicated their approval of the resolution subsequently, felt the same way that you did as to the effect of the resolution?

A. Yes. I believe that the majority of the men who signed that paper that I signed did not believe that they were signing or voting for a strike.

Q. And was it your opinion, on the evening of Monday, October 7th, that a majority of the men had felt that the strike had
1173 been called without their having ever been given the opportunity to express themselves as to whether or not they were in favor of it?

A. I knew that there was a large group of men that felt that way. I don't know whether they constituted a majority or not.

Q. By a large group you mean as many as fifteen or twenty?

A. Yes.

Q. More than that?

A. Well, I had no way of finding out.

Q. Is it true that a majority of the men with whom I had discussed the subject expressed that opinion?

A. Yes; an overwhelming majority of the men with whom I had discussed the subject felt that way about it.

Q. And was it true that on that evening before you commenced your preparations for the meeting at the Bellevue Hotel that you believed that a majority, or at least a large number of the men were under the impression that the leadership in the strike was not acting in the best interests of the men?

A. I am afraid I didn't get the question.

(The question referred to was read aloud by the reporter as above recorded.)

A. Yes.

Trial Examiner EICKHOFF. There is no matter of good or bad faith involved in your answer, is there? In other words, was
1174 there a feeling that the leaders were acting in bad faith, or merely the course they were pursuing was mistaken?

The WITNESS. Mistaken. I don't believe anybody actually acted in bad faith. I think that every one was sincere in what they did, but it was a matter of being mistaken; that is all.

By Mr. MERRICK:

Q. Do you remember having come into the room in the Bellevue Hotel prior to the commencement of the meeting and then coming out in the company of Mr. Jorgensen and some others and meeting Mr. Loudermilk and Mr. Palmer and some one else just outside the room?

A. I remember prior to the meeting that Mr. Loudermilk arrived and he requested that he be permitted to talk to Mr. Jorgensen privately.

Q. That is not what I am referring to. There is some testimony in the record by one of the prior witnesses called by the Board——

Mr. EDISES. (Interrupting.) Two prior witnesses.

By Mr. MERRICK:

Q. Two of the prior witnesses, that they went upstairs in the Bellevue Hotel to the rooms where they understood this meeting was to be held, and hearing some voices inside a room; that they stopped outside and listened through the keyhole for a time, and——

Mr. EDISES. (Interrupting.) I object to that. They didn't say they listened through the keyhole.

By Mr. MERRICK:

Q. Listened around the cracks of the door, and——

Mr. EDISES. (Interrupting.) They didn't say that. Try and be fair in your statement of the testimony.

1175 By Mr. MERRICK:

Q. And heard some one talking within and they thought they recognized your voice and Mr. Jorgensen's voice, and subse-

quently the door opened and you and Mr. Jorgensen and someone else came out and went downstairs on the elevator with these men.

Do you remember anything of that kind?

A. I don't remember that incident.

Q. Were you, prior to the meeting, in a room with Mr. Jorgensen and the door closed?

A. I believe the door to the bedroom was closed. There were two rooms, each having a door opening on the hall.

Q. And the door to the hall was closed?

A. I don't know whether it was open or closed.

Q. When you were there with Mr. Jorgensen what were you doing, or what were you discussing?

A. I don't remember what were discussing.

Q. Was Mr. Jorgensen at that time telling you anything about what you should do at the meeting?

A. No; he told me at no time what I should do at the meeting.

Q. Did he have any part whatsoever in connection with this meeting other than what you have already testified to?

A. No. I would like to add to that that he did have a private conversation with Mr. Loudermilk. I left them alone in the room and closed the door in between. What happened during that conversation, I don't know.

1176 Q. Do you remember at any time when you were with Mr. Jorgensen hearing him say, "If they get tough, we will get tough," or "rough," whichever it was, expressing some such sentiment as that?

A. I don't remember him expressing anything like that. He might have said something like that.

Q. Was the selection of the chairman for this meeting prearranged?

A. No.

Q. I think there is testimony you were nominated as chairman.

A. No, no. I nominated Mr. Burtz, and he declined the nomination; and he in turn nominated Mr. McLaughlin, who was appointed chairman.

Q. Had you previously discussed with any one the name of Mr. McLaughlin as chairman?

A. No. In fact, the idea of naming any chairman at all did not occur to me until that particular moment.

Q. As far as you know, there was a free opportunity given every one to make nominations?

A. Yes.

Q. Were any other nominations made?

A. No, it was unanimous for Mr. McLaughlin.

Q. When you returned to the H. B. office in the morning of October 8th, you said you didn't make any application for

1177 reemployment, is that right?

A. That is right.

Q. What did you do?

A. I went right to work.

Q. And did the other men who came down at that time go right to work?

A. As far as I know, everybody appeared to be busy doing something.

Q. You say the next day you did sign something?

A. Yes.

Q. Do you remember what it said, the application that you signed?

A. Aside from the first line, I don't remember. It said something like, "I hereby apply for reinstatement," or words to that effect. I didn't read the whole thing carefully.

Q. Isn't it true that it said, "Confirming my verbal application made at such and such a time?"

A. Yes, that is true.

Q. I show you Board's Exhibit No. 4, which happens to be the application for reemployment of Mr. Palmer. Do you remember whether what you signed was approximately the same phraseology as this?

Mr. EDISES. I object to that question, Mr. Examiner, and suggest that he produce the application. That will determine, without any question, whether or not the applications are the same.

1178

Trial Examiner EICKHOFF. You may call for it on redirect.

Mr. EDISES. I hereby call for it. I suggest that you produce it, Mr. Merrick, before permitting the witness to look at this.

Trial Examiner EICKHOFF. I will allow it on cross examination. If you want to put it in, you can put it in on redirect.

A. (Examining Board's Exhibit No. 4.) It seems to me that the wording is essentially the same, if not exactly the same.

Trial Examiner EICKHOFF. Will you produce the original application of Mr. Hatch?

Mr. MERRICK. I will bring it this afternoon.

By Mr. MERRICK:

Q. Did you at any time tender your resignation to ARTA?

A. Yes; I did.

Q. When was that?

A. I believe I mailed that on October 10th.

Q. Did any representative of the Mackay Radio and Telegraph Company ask you to do that?

A. No.

Q. Or in any way insinuate that they hoped you would do it?

A. No.

Q. Do you know of any case in which the representatives of the Mackay Radio have attempted to induce any employe to resign from the union?

1179

Examination by Trial Examiner EICKHOFF:

Q. I want to show the witness Board's Exhibit No. 13. Did you sign that?

A. (Examining Board's Exhibit No. 13.) Yes, sir.

Q. And why did you sign that?

A. Well, I signed that because I believed that ARTA should have no power to act for the employes of the H. B. office. That is not a resignation from ARTA.

Q. It would amount to the same thing, wouldn't it?

A. No. A great many of the men employed in the H. B. office are licensed men and their affiliation with ARTA is almost a necessity with the marine agreement now in effect.

By Mr. MERRICK:

Q. Do you know whether any one who signed their names to that document are still members of ARTA?

A. I am not familiar with the names. I would have to read them over. I don't know who belongs to ARTA now, as far as that is concerned. I don't know who are the members, and who are not.

Q. I believe they have difficulty themselves in determining who are members. They permit all of them to attend meetings, don't they?

Mr. EDISES. I object to that statement going into the record. Don't you know how to introduce evidence, Mr. Merrick?

1180 Mr. MERRICK. That is comment on the evidence already in.

Trial Examiner EICKHOFF. Let's not have any further discussion on that.

We will adjourn until 2 o'clock.

(Thereupon, at 12 o'clock noon, a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2:10 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner EICKHOFF. Are you ready, gentlemen?

Mr. EDISES. Ready.

Mr. MERRICK. We are ready.

Trial Examiner EICKHOFF. Mr. Hatch, will you take the stand?

ROBERT IRVIN HATCH, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross examination by Mr. MERRICK:

Q. Can you identify this, Mr. Hatch?

A. [Examining application.] Yes.

Q. That is the application you filed for reemployment after the termination of the strike?

A. Yes.

Q. That is your signature?

A. Yes.

1181 Mr. MERRICK. I offer this in evidence.

Trial Examiner EICKHOFF. Any objection?

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. It may be admitted as Respondent's Exhibit No. 8.

(The application referred to was received in evidence and marked "Respondent's Exhibit No. 8, Witness Hatch.")

Trial Examiner EICKHOFF. When did you sign that, Mr. Hatch?

The WITNESS. I believe I signed that on the day following the strike; I mean after I went back to work.

Trial Examiner EICKHOFF. On October 8th?

The WITNESS. October 8th was—no, I think I signed that on October 9th. We came back to work on the morning of the 8th, and it was the following afternoon.

By Mr. MERRICK:

Q. Have you ever seen this document before?

A. [Examining letter.] Yes.

Q. Where did you see it?

A. On the bulletin board in the operating room.

Q. On what floor is that?

A. On the seventh floor?

Q. In the operating room?

A. At 22 Battery Street; yes.

1182 Q. I think, in answer to a question from the Examiner, you indicated that you had not ever seen any letter signed by Mr. Rodman, addressed to the employes, in regard to the round robin that was sent to him. Is that correct?

A. If I said that I hadn't seen this, I wasn't thinking of this particular document, because I have seen this. I either misunderstood the question or was thinking of something else. As I recall the question, it was asked whether I had ever seen a letter of—that is, from Mr. Rodman. In fact, I had forgotten all about this.

Q. You do remember having seen this?

A. Yes.

Q. About when did you see it?

A. I don't recall the date. The date on it here is October 18th. I presume it was about that date.

Mr. MERRICK. I offer the letter in evidence.

Trial Examiner EICKHOFF. Any objection?

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. It may be admitted as Respondent's Exhibit No. 9.

(The letter referred to was received in evidence and marked "Respondent's Exhibit No. 9, Witness Hatch.")

By Mr. MERRICK:

Q. Within the last two months, Mr. Hatch, have you seen
1183 any letters to the company complaining about the treatment that the company has accorded you as an employe?

A. Yes.

Q. Did the Mackay Radio and Telegraph Company ever pay your dues or your initiation fees to the union?

A. No.

Q. Did they ever in any way give you any special financial assistance that was designed to defray the expenses of your union membership?

A. No, positively not.

Q. Do you know of any one that did receive such assistance from the company?

A. No, I do not.

Q. Were you at any time employed by the company as a spy or a stool pigeon to report on the union activities?

A. No, certainly not.

Q. Do you know of any one who was thus employed by the company?

A. No, I do not.

Q. Did you hear the statement that I made toward the close of the session yesterday in regard to the conversation I had with you early yesterday afternoon before the commencement of the hearing?

A. Yes.

Q. Have you anything to add to that statement, or do you
1184 think it was incorrect in any particulars?

A. No.

Mr. EDISES. I object to that as calling for his conclusion. You can ask, if you want to ,about some particular, specific aspect of it.

Trial Examiner EICKHOFF. If you were asked about that conversation would your testimony be the same as Mr. Merrick's statement?

The WITNESS. Yes.

By Mr. MERRICK:

Q. Did I in any way attempt to influence your testimony, other than to suggest to you that you could reopen it and make sure that the answers you had given were true and correct?

A. You said that my answer appeared to be too brief, and gave an erroneous impression.

Q. Did I say that it gave an erroneous impression, or did I tell you the impression that it had given to me and ask you whether or not that was the impression you intended to convey?

A. You asked me whether that was the impression I intended to convey, that Mr. Jorgensen's conversation with me was something that he said to me on the telephone that influenced my opinion in regard to ARTA.

Q. Did I in any way indicate the testimony that I wished that you offer from the witness stand, other than I warned you to be sure that you had said what you intended to say?

1185 A. No. You merely said that my very brief answer might have created an erroneous impression, and that it was within

my rights to ask for a re-reading of the question, and possibly to enlarge upon it if the Examiner would permit it.

Q. I show you what appears to be a copy of the telegram addressed, "To Operating Staff H. B. Office," dated New York, October 8, 1935, and ask you whether you have ever seen—and signed by H. P. Funke, Chairman M. K. Relations Committee—that or a similar document?

A. (Examining copy of telegram.) Yes, I have.

Q. Where did you see that?

A. It was posted on the bulletin board in the operating room, the same bulletin board that the other letter to Mr. Rodman, that is, from Mr. Rodman, was posted on.

Q. Can you recall approximately when you saw it?

A. I believe it was on October 9th.

Q. Did you ever discuss the contents of that message with Mr. McDonough?

A. No.

Mr. EDISES. Mr. Examiner, I want to state that this matter was not gone into on direct, and I would like to ask Mr. Merrick whether he is making Mr. Hatch his own witness for that particular testimony.

Mr. MERRICK. The Examiner will rule whether I am. I have no objection.

1186 (Thereupon Trial Examiner Eickhoff examined copy of telegram referred to.)

Mr. EDISES. I renew my request that Mr. Merrick be instructed to handle this matter as if Mr. Hatch was his own witness.

Mr. MERRICK. I don't want to argue about it. I think in view of the fact that the attorney for the Board discussed considerably on direct examination the status of Mr. McDonough, what he was doing here, and what this witness saw him do, that it would be helpful to discuss this message in that connection with this witness.

Trial Examiner EICKHOFF. I will allow it.

Are you going to offer this?

Mr. MERRICK. Yes; if Mr. Edises has no objection to it. It is not the original. We cannot locate the original, but this, I am informed, is a true copy of it.

Trial Examiner EICKHOFF. Have you any objection?

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. It may be admitted as Respondent's Exhibit No. 10.

(The copy of the telegram referred to was received in evidence and marked "Respondent's Exhibit No. 10, Witness Hatch.")

Trial Examiner EICKHOFF. I would like to have developed of
1187 the witness what the Relations Committee was that signed this telegram.

Mr. MERRICK. That is, whether he knows the other members of the committee?

Trial Examiner EICKHOFF. Whether he knows the signatory of the telegram.

By Mr. MERRICK:

Q. Do you know Mr. H. P. Funke is an employe of the Mackay Radio and Telegraph Company at New York?

A. I have no direct knowledge of it. I know by hearsay that he is. I don't know him personally at all.

Trial Examiner EICKHOFF. He signed for some committee, didn't he?

Mr. MERRICK. As Chairman of the M. K. Relations Committee.

Examination by Trial Examiner EICKHOFF:

Q. Do you know what that Relations Committee was?

A. Yes; I heard something about it. At the ARTA meetings it was discussed and Mr. Funke's name was brought up.

Q. Will you tell us briefly what that committee was? [No answer.]

By Mr. MERRICK:

Q. Do you know anything in addition to what was stated here?

A. I know very little about the committee. Mr. Merrick asked me if I discussed this same thing with Mr. McDonough. I would
1188 like to add to my reply that I didn't permit Mr. McDonough to discuss the matter with me. He started to tell me all about this on that day when I circulated the notice regarding the meeting in the clock room. I told him that I was not interested in any sort of organization matters; that I didn't want to discuss the matter with him at all; that if he wanted to tell the rest of the fellows, I would be glad to help him get together with them so that he could speak to them if he wanted to.

By Trial Examiner EICKHOFF:

Q. Do you know what this Relations Committee was that Mr. Funke is a member of?

A. Yes. It was——

Mr. EDISES. I ask that he be permitted to answer without consulting that document.

(Referring to Respondent's Exhibit No. 10.)

Mr. MERRICK. Don't look at it then.

A. Yes; this was a committee which was elected by the employees in the operating room at 67 Broad Street, New York.

By Trial Examiner EICKHOFF:

Q. Was it an ARTA committee?

A. No; simply a committee representing that particular group of employees.

Q. And what is your source of information?

A. Discussion at the ARTA hall here in San Francisco. That was the first that I had heard of such a committee in New York.

Q. Before, during, or after the strike?

1189 A. It was before the strike.

By Mr. MERRICK:

Q. Did Mr. McDonough ever tell you that he had been sent out to the Pacific Coast to do any special work of any kind?

A. No; he did not.

Q. Did he ever tell you that he had any special standing in the company?

A. No.

Q. Did he ever tell you that he was a close friend of Mr. Stone and reported directly to him, and wasn't under the jurisdiction of the local office of the company here?

A. No.

Q. Do you know whether he ever told any one else any such thing?

A. No; I do not.

Q. He didn't, as far as you know?

A. As far as I know, he told no one.

Trial Examiner EICKHOFF. But he came out here under company auspices, did he not?

The WITNESS. He came out with the rest of the fellows on that plane, apparently as a strikebreaker.

Mr. MERRICK. I have no further questions.

Trial Examiner EICKHOFF. Have you any redirect?

Mr. EDISES. Yes; I have a few questions.

Redirect examination by Mr. EDISES:

1190 Q. Did you ever see this before, Mr. Hatch?

A. [Examining telegraph blank.] Yes.

Q. What is it?

A. It is a ballot.

Q. What kind of a ballot?

A. It is a ballot to determine the sentiment of the members in regard to the strike action.

Q. Did you gather that from what is stated on the ballot?

A. Yes.

Q. Will you read it?

A. "Do you favor strike action to obtain a suitable wage and working agreement for all employees of the Mackay Radio and Telegraph Company?"

Q. And is the ballot marked to indicate a preference?

A. Yes; marked "Yes," and "No."

Q. What is the mark which appears on that?

A. "Yes."

Q. Meaning that you do favor strike action as set forth by the wording of the ballot?

A. Yes.

Q. Whose signature is that?

A. Mine.

Mr. EDISES. I offer this in evidence as Board's Exhibit No. 14.

Mr. MERRICK. No objection.

1191 Trial Examiner EICKHOFF. It may be admitted as Board Exhibit No. 14.

(The ballot referred to was received in evidence and marked "Board's Exhibit No. 14, Witness Hatch.")

Examination by Trial Examiner EICKHOFF:

Q. When was this ballot cast by you, Mr. Hatch?

A. At a meeting in July; latter part of July.

Q. The date on the ballot is July 5th. Would that be the date?

A. I had an idea that it was in the latter part of July. However, that date might be correct.

Q. You are not sure?

A. No. Usually the meetings were held on the first Friday of each month, but I have an idea that this was taken at a special meeting later in the month. However, it might have been a regular scheduled meeting.

Q. Was this an ARTA meeting?

A. Yes.

By Mr. EDISES:

Q. You stated, I believe, in response to a question by the Examiner, that if all of the men on the list, the eleven, had re-applied for work, that morning they would have been put to work; is that correct?

1192 Mr. MERRICK. He can't testify to that of his own knowledge. I don't think he said that.

Mr. EDISES. I think so. Let's ask him.

Mr. MERRICK. I don't think it is a proper question.

Trial Examiner EICKHOFF. Do you recall making such a statement?

The WITNESS. No.

By Mr. EDISES:

Q. What did you say in that connection?

A. That was a question that was asked me today.

Q. Yes; I believe you testified to it. However, is it correct to state that if the eleven men had gone down to work that morning with the others, that they would have been put to work?

Mr. MERRICK. As far as he knows.

Trial Examiner EICKHOFF. Always as far as he knows.

A. Yes; and their permanent status would depend on whether or not their applications were approved or rejected by Mr. Stone.

By Mr. EDISES:

Q. But they could have gone to work that morning?

A. Yes. That was what Mr. Jorgensen stated at the meeting, to the best of my recollection. He said all of the men would be put back to work.

Q. In view of that fact, why did you call it a shit list, if they would have been taken back to work?

A. Because there was the possibility that their applica-

1193 tions would be rejected eventually; their permanent status might have been different.

Q. Do you remember yet when and where you spoke to the men who said they were dissatisfied with the conduct of the strike?

A. No; I don't remember. I was on picket duty and was walking around the street, bumping into fellows here and there; down at the hall before and after meetings, and between meetings. I met various fellows talking in groups. My impression was more or less of a general one.

Q. You still cannot remember any specific instance of when and where you spoke to a single person, is that correct?

A. Not any specific time or place; no.

Q. You testified that you usually had breakfast with Mr. Jorgensen every morning; is that correct?

A. No; I didn't have breakfast every morning with him.

Q. I say, that you usually had breakfast each morning with Mr. Jorgensen. Wasn't that your testimony?

A. Yes.

Q. Who did you breakfast with the morning of October 4th?

A. I don't remember. That was Friday morning?

Q. Friday morning.

A. I haven't the slightest idea.

Q. Could it have been Mr. Jorgensen?

A. It could have been; yes.

1194 Q. When I first asked you about your telephone conversation with Mr. Jorgensen at 3:15 a. m. on the morning of October 5, you said that nothing further was said at the time in regard to a future appointment, or a future meeting, is that right?

A. The first time you asked me that question I recall that I said that Mr. Jorgensen told me to give him a call in the morning; but I am sure that reply did not get in the record because you were talking to Mr. Merrick, or some one else at the time. I am not sure whether the reporter caught it or not.

Q. You didn't state anything at that time as to Mr. Jorgensen's inviting you to see him in the morning, did you?

A. No, I didn't state that at any time. He didn't invite me to see him in the morning. He requested me to telephone him in the morning.

Q. You state that now?

A. Yes.

Mr. EDISES. Would it be possible to ascertain whether or not the record contains a statement from Mr. Hatch to the effect that Mr. Jorgensen asked him to call him in the morning? Could we clear that up now?

Trial Examiner EICKHOFF. I don't think so. You can look at the transcript later and recall the witness if necessary.

By Mr. EDISES:

1195 Q. Did you breakfast with Mr. Jorgensen on the morning of October 5th?

A. October 5th, that was Saturday?

Q. Yes.

A. I don't even recall where I had breakfast. I think I went downtown late that morning.

Q. Could you have had breakfast with Mr. Jorgensen that morning?

A. You mean Saturday?

Q. Yes.

A. No, impossible. I steered clear of Mr. Jorgensen from then on.

Q. Who did you breakfast with on the morning of October 6th?

Mr. MERRICK. Why skip lunch and dinner?

Mr. EDISES. He seems to have preference for breakfast.

A. October 6th was Sunday. That was the morning I met Mr. Dewey at Foster's.

By Mr. EDISES:

Q. Did you by any chance have breakfast with Mr. Jorgensen on the morning of October 7th?

A. No.

Q. With whom did you have breakfast that morning?

A. That was Monday?

Q. Yes.

A. I am trying to recall where I had breakfast on Monday. [Pause.] I don't know. It might have been with my wife; I don't recall.

1196 Q. Could it have been with Mr. Jorgensen?

A. No—oh, it could have been, but it was not.

Q. You mean in the sense that you might have breakfasted with him that morning and have no clear recollection of it at the present time?

A. Oh, no. It is impossible for me not to have a clear recollection of that, because——

Q. (Interrupting.) If you had eaten with him, would you remember?

A. I had very definite motives in not having breakfast with Mr. Jorgensen, or anybody that I could avoid.

Q. That morning?

A. Yes; or any time during the strike.

Q. What were your motives for not having contact, or being seen with the company officials during the strike?

A. My motive there was quite obvious.

Q. So that it wouldn't appear to them you were dickering with the company, isn't that correct?

A. Yes; to a certain extent.

Q. When you spoke to Mr. Merrick night before last, did you talk about anything other than the amplification of testimony that you have just referred to?

A. You mean—I think that conversation occurred around noon. No; I don't recall anything further being said, excepting that

1197 he said that it was quite all right for me to talk to him in that way; that it was no violation of ethics, and if I wanted to, I could tell the Court.

Q. Do you recall whether the sabotage incident was mentioned?
A. Which sabotage incident?
Q. Your proposal to Mr. Rone to go down and blow out the wires.
A. No.
Q. Do you recall whether the proposed trip to meet the incoming strikebreaker plane was mentioned?
A. No.
Q. You don't recall?
A. No; it was not mentioned.
Q. It was not mentioned?
A. No.
Q. Was Mr. York's name on that list?
A. You mean the shit list?
Q. That is right.
A. Yes.
Q. And was Mr. York taken back to work?
A. Yes.
Q. Was he an active union member?
A. Yes.
Q. He was demoted from supervisor to operator, was he not, after the strike?
1198 A. Yes.
Q. You testified that you saw petitions being circulated in the office, other than the petition or the round robin that was circulated after the men went back to work. In other words, you saw various documents, literature, ARTA literature, being circulated, was that correct?
A. Yes.
Q. By whom did you see those documents circulated?
A. I don't remember who passed them around. They were being handed around from one individual to another. There was no one seemed to act as any particular agent of ARTA in passing them around. It was open and above board. One man passed it on to the next. I don't recall who circulated the things, who started it.
Q. What articles, or papers, or documents were thus circulated?
Mr. MERRICK. I would like to ask the Examiner if he considers this a proper line of questioning.
Trial Examiner EICKHOFF. I will allow about one more question and make up my mind.

By Mr. EDISES:

Q. Go ahead.
A. Well, the one that I signed, the one regarding joint——
Q. (Interrupting.) I mean other than the round robin.
A. Letters from Mr. Salisbury in New York addressed to the individuals here.
1199 Q. Who circulated those?
A. I don't know. They were handed around in the same way that the others were.

Q. That is all you can think of?

A. That is all I can think of. I don't know of any individual who was responsible for the circulation of that literature.

Q. When you first testified to your accidental meeting with Mr. Rodman, on the street during the strike, I asked you what was said. You didn't make any reference to a telegram that time, or to Mr. Rodman having shown you a telegram. How do you account for that?

A. I don't account for it at all, excepting it must have slipped my mind.

The most important thing, in meeting Mr. Rodman, that he brought out was the fact that they were trying to open up a direct circuit, or were going to, because New York and Los Angeles and, I believe, I told you that.

Q. How long did that conversation last?

A. Perhaps a minute. We were passing each other, and didn't see each other until we had passed.

Q. Did you tell any of the men at ARTA hall that you had spoken to Mr. Rodman?

A. No, I don't recall telling anybody at ARTA hall.

Q. Did you tell any one that you had spoken to him?

1200 A. I might have told Mr. Loudermilk and Mr. Rone. In fact, I believe I did tell them about opening the Los Angeles circuit and where I got the information.

Q. And you stated to them where you got the information?

A. I believe so.

Q. Are you positive of that?

A. No, I am not. However, if you will permit me, Mr. Rodman's statement that they were opening a direct New York-Los Angeles circuit is what led me to believe that Mr. Mair was telling the truth when he said they were going back to Los Angeles, because naturally, I supposed they were going to work that circuit down there.

Q. What class of operators, referring to class "A," "B," or "C," and so on, operate the trans-Pacific and transcontinental circuits, if you know?

Mr. MERRICK. I object. There is no dispute about this thing, and the witness is chief engineer and would not be in position, any position of responsibility in the operating room, and has no knowledge about it. Mr. Jorgensen can be called later and he can be asked all these questions.

By Mr. EDISES:

Q. Will you answer that, if you know?

Trial Examiner EICKHOFF. Is it particularly material?

Mr. EDISES. Yes; it has a direct bearing on something that Mr. Merrick brought out from Mr. Hatch in his questioning.

1201 Mr. MERRICK. What?

Mr. EDISES. Let's have the answer, if he knows, first.

Trial Examiner EICKHOFF. I will allow the question. Do you know the answer?

The WITNESS. I don't definitely know the answer to that question. I believe they are class "A" operators.

By Mr. EDISES:

Q. Do you know of any reason why they are class "A" operators?

Mr. MERRICK. I object to the question.

Trial Examiner EICKHOFF. Overruled.

Mr. MERRICK. He is asking, Mr. Examiner, not for the opinion of this witness, because the opinion of this witness is an irrelevant fact, but apparently to find out what was the situation. This witness is obviously incompetent to tell what class of an operator was necessary to operate different circuits.

Trial Examiner EICKHOFF. I wouldn't say obviously, because he said he was an intermediary between the Engineering Department and the operating room. He might know.

Mr. MERRICK. He said between the Engineering Department and the Traffic Department. If you think it is helpful, I have no objection.

Mr. EDISES. You are taking up more time than it would take to answer it.

1202 Mr. MERRICK. That is the case with any individual objection.

By Mr. EDISES:

Q. Will you answer the question?

A. I have no definite information why that is a fact, but I believe it is due to the fact that, in the case of the trans-Pacific, it is a higher rate and mostly code and requires careful handling and the same thing, to a lesser extent, applies to the transcontinental circuit.

Q. A much more difficult job than the coastwise, isn't that correct?

A. I wouldn't say it is more difficult; it is more exacting.

Q. Isn't it true that only class "A" operators operate the trans-Pacific and transcontinental circuits; whereas the coastwise can be operated by class "B" or "C" or "D" operators—do you know that to be a fact?

Mr. MERRICK. That is improper cross examination.

A. I don't believe that is.

Trial Examiner EICKHOFF. I do not see where you are getting, Mr. Edises.

By Mr. EDISES:

Q. Now, Mr. Hatch, you testified——

Trial Examiner EICKHOFF. Just a minute! Is there any reason you cannot reveal what you are seeking to bring out or prove in connection with the case?

Mr. EDISES. I am perfectly willing; yes. Mr. Hatch testified
1203 that among the very cogent reasons which he had for wanting to rush these men back to work, even though he knew that a meeting, an ARTA meeting, had been scheduled for the next morning at 10 o'clock, was that strike breakers were being railroaded out here who would fill these men's jobs.

Now, the truth of the matter is, apparently, that certain of these jobs, particularly the five men who had not been permitted to go back to work, required class "A" operators and couldn't be filled by any one else.

Now, I want to know whether he knew those strikebreakers were class "A" operators or not.

Mr. MERRICK. You haven't asked him that.

By Mr. EDISES:

Q. I am going to ask him that now. Did you know whether they were class "A" operators?

A. I knew some of the men; I knew Mr. Monroe and Mr. French.

Q. What class operators were they?

A. I knew of Mr. Behn.

Q. Did you know the class of operator he was?

A. No.

Q. You didn't know their classification?

A. No; but I know they were crackerjack operators. I knew Monroe and French in New York, and I knew they were very good operators.

Q. You didn't know what classification they were?

A. No.

1204 Trial Examiner EICKHOFF. Do you contend that a class "B" operator couldn't do a class "A" operator's work?

Mr. EDISES. It seems to have been the practice.

Mr. MERRICK. Apparently Mr. Edises has an erroneous idea as to what these classifications are. The classification is applied to the job by reason of the amount of work that is required, and it refers only to his pay.

Mr. EDISES. Doesn't refer to his ability at all?

Mr. MERRICK. Not particularly.

Mr. EDISES. So a class "D" operator is presumably as able as a class "A" operator?

Mr. MERRICK. I am not testifying. You are making statements about these classifications which are erroneous. Mr. Jorgensen, or Mr. Rodman, or Captain Dodd can tell you what the basis is.

Trial Examiner EICKHOFF. I think you should first prove that the class "B" operator couldn't be promoted to grade "A" work before this means anything.

Mr. MERRICK. There is the international circuit out of New York the same as in New York.

Trial Examiner EICKHOFF. I do not think this means much, coming from this witness. It is refining and analyzing these things that passed through his head. There are more important things in the case, it seems to me, than probing into things like that. We
1205 will be here forever if you search the convolutions of his brain on every occasion.

Mr. EDISES. I have no further questions of this witness, Mr. Examiner.

Recross examination by Mr. MERRICK:

Q. Mr. Hatch, I want to refer to Exhibit No. 14 of the Board, which was just put in evidence through you. Do you regard the action taken at that time—did you regard the action taken at that time as sufficient authority to the officers of the union to call the strike at any time thereafter that they might deem fit, without again seeking the attitude of the members of the union?

A. No; most emphatically no.

Q. What reason had you to believe that no strike action would be taken as a result of this action without consulting the membership further?

A. It was explained after this was taken at the meeting, and it was discussed before the ballot was taken, that this was really not a strike ballot but merely to find out the sentiment of the membership in case it did come to a showndown. It was nothing more or less than a straw vote.

Q. And even though you voted in this way on July 5th, that didn't affect your feeling—I mean on October 7th, or even on October 5th, when Mr. Jorgensen first told you about the strike, that the strike had been called without obtaining the proper authority from the membership?

1206 A. That question was rather lengthy. I don't know as I understood it.

Q. I think it was unnecessarily involved. You said that you were very much surprised when Mr. Jorgensen told you, on the morning of Saturday, the strike had been called, and that you felt at that time that the officers had not acted properly; that they should have had a referendum vote on the strike.

A. Yes, that is right; that is the way I felt.

Q. And you still, at that time, knew about what you had done on July 5th?

A. Yes.

Q. And you believe that the other men who expressed themselves as feeling that the strike had been called without obtaining proper authority also knew about the vote of July 5th? Most every one voted in connection with this, as far as you know, on July 5th?

A. There was a fairly large turnout at that meeting. The chances are that some of the men you are referring to did know; they had voted.

Q. Was this actual ballot, that is in evidence, signed by you at the meeting, or at some other time?

A. At the meeting.

Q. They used Mackay Radio telegraph blanks at the ARTA hall as literature for general purposes?

1207 Mr. EDISES. I object to that question as incompetent, irrelevant, and immaterial.

Trial Examiner EICKHOFF. Sustained.

Mr. EDISES. How do you know that they didn't make a big profit on it?

Trial Examiner EICKHOFF. It was used on that one, I can see that.

By Mr. MERRICK:

Q. Did any one in the union ever tell you that they thought that this strike ballot of July 5th empowered the officers to call a strike without any further referendum?

A. No. I believe it was thoroughly understood by every one that that was not a strike vote, but merely a sort of a straw vote indicating which way the wind blew in case there was a strike vote. When I signed that ballot I didn't consider it to be of any material importance, because, after all, the only weapon that a union man has is the strike. It is merely to show that you are sticking by that principle by signing that thing.

Q. That is, your understanding was the officers wanted to know at that time what the possibility was if they thought strike action was advisable; that is, as to whether the men would support them?

A. Yes. That was explained at that meeting and there was considerable discussion after the ballot was taken.

1208 Q. Mr. Edises asked you a question awhile ago—I don't know the exact phraseology of it and it occurred to me that you may not have—in which he asked you whether your motive for not wanting to see the officers of the company during the strike was because you didn't want to appear to be, and he used the word——

Trial Examiner EICKHOFF. Dickering.

Mr. MERRICK. Dickering with the company, and you said yes.

A. Yes.

Q. That is the reason?

A. Yes.

Q. I think Mr. Edises had in mind, when he asked that question——

Mr. EDISES. (Interrupting.) I object to your stating what I had in mind.

Trial Examiner EICKHOFF. Just a minute—this is all hypothetical.

By Mr. MERRICK:

Q. Did you think when Mr. Edises asked that question that he was intending to infer that the reason why you didn't want to see the members of the company was because you were secretly acting as the agent of the company and didn't want the men to know that you were contacting officials of the company? Is that what you understood by it?

Mr. EDISES. I object to that question as submitting a
1209 ready-made, hand-tailored proposition for him to stamp his approval on.

Trial Examiner EICKHOFF. Isn't that all right on cross-examination, Mr. Edises?

Mr. EDISES. Cross-examination is all right, but this proposition of simply submitting propositions that can only be answered obviously in one way, is that proper cross-examination?

Mr. MERRICK. Is that what you intended to ask him, to infer in the question?

Trial Examiner EICKHOFF. Do you remember what the question was?

The WITNESS. I do. I think the implication was quite clear, when Mr. Edises stated the question.

Trial Examiner EICKHOFF. As a matter of fact, what did you mean to express when you answered Mr. Edises' question? That is, why didn't you want to have the fact known, or objected to being seen with the company officials?

The WITNESS. Mr. Examiner, before I joined the union I discussed with Mr. Salisbury my peculiar position in the company, and I gave it as one of my reasons for not joining before, and the reason why I was reluctant to join then was the fact that I was daily in close contact with officials of the company, namely, Mr. Jorgensen, Captain Dodd, the engineer, chief engineer, and his assistant, as
1210 a part of my regular routine duties, and that if I attended union meetings, and the next day was seen in conference with company officials on strictly company business, and any leak occurred in the union hall, as to who attended these meetings, or what happened there, got back to the company, the finger of suspicion would be pointed toward me. I had that whole situation in mind after the declaration of the strike, so I naturally leaned over backward in avoiding such contacts.

Of course, if a company official came up to me and spoke to me voluntarily, I wouldn't turn and walk away. But I did not go out of my way to meet them, but I did take considerable pains that I was not seen with them under what might be considered to be suspicious circumstances.

By Mr. MERRICK:

Q. You had never been requested by any official of the company to avoid being seen in their company during the strike, had you?

A. No; I had not.

Q. And I think you have already made this pretty clear now, but in view of that question, I would like to have you make it clear now, if it hasn't been before—did you at any time during the strike perform any special services of any kind for the company, in regard to reporting what was going on among the members who were taking part in the strike or trying to break up the union or form
1211 any other association of employees?

A. No. In fact, I was careful in discussing anything in connection with the union, not to say anything which would look as though I were reporting their activities to the company.

Q. And you never did make any such statement?

A. No; I never did.

Mr. MERRICK. That is all.

Trial Examiner EICKHOFF. Any further questions?

Mr. EDISES. Just one question, Mr. Examiner.

Further redirect examination by Mr. EDISES:

Q. Did you ever act as a strike breaker before?

A. I never have acted as a strike breaker.

Mr. EDISES. No further questions.

Trial Examiner EICKHOFF. That is what you might call a leading question.

May this witness be excused?

Mr. EDISES. I think so, so far as I am concerned.

Mr. MERRICK. Yes.

(Witness excused.)

Trial Examiner EICKHOFF. All right, call your next witness, please. please.

Mr. EDISES. Mr. Spanover, take the stand, please.

1212 JOHN SPANOVER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. EDISES. I want to state in case Mr. Merrick feels inclined to bring the question up later, that I have never spoken to Mr. Spanover before, either, and my reasons for not doing so were similar reasons for not having spoken previously to Mr. Hatch.

Mr. MERRICK. I think they are mistaken.

Direct examination by Mr. EDISES:

Q. What is your name?

A. John Spanover.

Q. And your address?

A. 833 First Avenue.

Q. When did you go to work for Mackay Radio?

A. May or June 1924.

Q. 1924?

A. '24.

Q. What was your job?

A. Operator.

Q. What class?

The WITNESS. Pardon me?

Q. What class operator?

A. There wasn't any distinction at that time.

Q. After the classes were put in, what was your class?

1213 A. Class "C."

Q. "C?" What salary were you receiving just before the strike?

A. $160.

Q. $160?

A. Yes.

Q. A month?

A. Yes.

Q. Do you belong to the ARTA?

A. I don't now.

Q. What do you mean by that?

A. They received a check for $5 in payment for initiation fees, which was given to them by a Mr. Bartlett for my account, and since I haven't received any card, and I don't know where the $5 went to.

Q. Ever go to ARTA meetings?

A. One.

Q. When?

A. In the morning—is that the official meeting you mean, informal meetings?

Q. Their usual meetings—regular meetings.

A. One; that was on Monday. I don't remember the date that the—during the strike.

Q. During the strike?

A. Monday, Monday morning.

1214 Q. Go to any since?

A. No.

Q. What is your opinion of ARTA?

A. I don't—I didn't join them when they first organized, and I didn't join them when they went out on strike. As far as the opinion is concerned, I didn't believe in the formation of a union—labor organization at this particular time.

Q. You are opposed to labor organizations, I take it?

A. No, not necessarily. In this particular case I am, because I couldn't see why we should tie up with marine departments and operators that are not so-called high-power operators that we are considered in the Mackay Radio.

Examination by Trial Examiner EICKHOFF:

Q. When did you pay this money, Mr. Spanover?

A. It was on Sunday afternoon or evening around four or five o'clock—that was during the strike.

Q. During the strike. You applied for membership at that time?

A. Yes.

Trial Examiner EICKHOFF. That is all.

By Mr. EDISES:

Q. Mr. Spanover, will you tell us your candid opinion of ARTA, this particular labor organization. You are under oath now.

1215 Mr. MERRICK. I don't think this is a proper question.

Mr. EDISES. Wait a minute!

Mr. MERRICK. He hasn't yet shown what makes this witness' opinion material.

Trial Examiner EICKHOFF. I think the question is too broad.

By Mr. EDISES:

Q. You have indicated that you don't—don't approve of ARTA as a labor organization?

Mr. MERRICK. I object to the cross examination.

Trial Examiner EICKHOFF. You will have to get down to brass tacks on this, Mr. Edises. If you are going to bring out some facts and know what they are, why go ahead. If you want to lead this witness, lead him, but don't be just all over the lot.

By Mr. EDISES:

Q. Did you join ARTA voluntarily or under pressure?

A. Well, I didn't do it—I did it voluntarily in the sense of the word, in that I did my own signing; but I did it to avoid any possible violence in the event that the strike was prolonged and some of the men got the idea it was the so-called holdouts like myself that created friction; and it was merely a protective arrangement. I figured if I signed it, as far as these men were concerned, I was a member of the ARTA and considered such; and in the event of violence—in the event that violence did start around there,
1216 they probably wouldn't single me out as an example.

Q. Do I understand your statement to mean that you joined ARTA simply in order to avoid being beaten up?

A. I wouldn't put it that way. Antagonism—I worked—I have been working with them for several years, and I didn't want them to feel that I was what they called a holdout.

Q. Did you ever see this before, Mr. Spanover? [Handing witness document.]

A. Yes, sir.

Q. Where did you see it?

A. In the office.

Q. Who prepared it?

A. I couldn't say truthfully; I don't know. In fact, when it came to me, you will note my signature is down the list quite aways, it had been handled by several men. Exactly who wrote it, or had it written, I don't know.

Q. Did you circulate it around the office?

A. Well, I don't know what you call circulate. I passed it along to several fellows; in fact, I took it personally to several—had a reason for several, that is, letting them read it, or sign it if they so desired, or leave it alone if they wished.

Q. What were your reasons?

A. Because I didn't want to put my name on a list with a real
1217 small minority. If the majority of the men were in favor of this particular thing, it was all right; but if they weren't, I didn't want to place myself in the position of a trouble maker, or, shall we say, company man.

Examination by Trial Examiner EICKHOFF:

Q. Who gave it to you, Mr. Spanover?

A. I don't remember. There were several men standing around the desk, as I remember it. The one—at one particular desk four or five—probably six—and it was being handed from one to the other, and every one read it.

Q. There were already some signatures on it when you first saw it?

A. Oh, yes. I think—may I have that a moment, please?

Trial Examiner EICKHOFF. Well, you have answered my question.

The WITNESS. Seven or eight on there.

Q. You have never seen it before?
A. No.
Q. You have never discussed it with anybody before?
A. No, sir.
Q. Ever discussed such a thing before with anybody?
A. No, sir.

By Mr. EDISES:

Q. Did you ever have any discussions with Mr. McDonough about forming an organization of H. B. men?
1218 A. No, sir.
Q. Do you know Mr. McDonough?
A. By sight.
Q. You had some correspondence with Mr. McDonough before he came out here?
A. Oh, no. I never met—never saw him until after the strike.
Q. Never saw him until after. Did you get a raise immediately after the strike, Mr. Spanover?
A. No, sir.

Examination by Trial Examiner EICKHOFF:

Q. Did you get any raise after the strike?
A. The man, Mr. Bartlett, resigned, and his position was put up on the board to bid on it, the whole office. I am senior man of the whole office. Heretofore they had bids up there for class "A" and "B" jobs. While I am a "B" man, I think I can hold down an "A" job if I wanted it. But my reason for not applying for them is that in the "A" and "B" jobs you work all day Saturday and also Sunday work included, and several so-called half holidays which the coast or the "C" men enjoyed, were not enjoyed by the "A" and "B" men. Incidentally, there was night work. So I preferred much to keep the "C" job and receive that much less, and have those after-
1219 noons to myself. However, this particular time when Mr. Bartlett resigned——
Q. When was this particular time?
A. May I ask Mr. Jorgensen?
Q. Not if you can remember it yourself. Can you fix the time with reference to the strike?
A. Well, it was after the strike.
Q. About how long?
A. Well, it would be, I guess——
Q. A matter of days, or weeks?
A. Oh, I don't know—I wouldn't say days or weeks, it was more than—in fact, it was several days if it was days, and might have been a couple of weeks.

He had this job coming up before the strike. It wasn't in connection with the strike. Anyway, when he had resigned, this bid went up on the board.

Q. You bid for his job?

A. I bid, not for his job; I didn't bid for his job, I bid for a "B" vacancy. There was a "B" vacancy—what was known as a class "B" vacancy; and you have to be a class "C" man in order to move to a "B" rating. I bid on this.

Q. You bid for the "B"?

A Yes.

Q. What was the vacancy created by Bartlett's leaving?

A. That was a "B" rating. My reasons——

Q. (Interrupting.) Never mind your reason. Tell us what
1220 happened. Did you get it?

A. Yes.

Q. What was the pay?

A. $170.

By Mr. EDISES:

Q. Do you know who took this petition home after the first day that it was circulated?

A. I had it one night; in fact, I had it several days. I held on to it.

Q. How did you happen to take it home? Hold on to it?

A. Well, when it got to me my signature was already on there and I didn't intend to let it get away with two or three signatures behind me. If a minority and not a majority was in favor, I intended to scratch my name off the list. If they wanted to go ahead with a minority, they had to count me out.

Q. Why, were you afraid?

A. I wasn't afraid.

Trial Examiner EICKHOFF. I think he has explained that thoroughly, Mr. Edises.

By Mr. EDISES:

Q. Didn't you leave the office one day when McLaughlin——

Mr. MERRICK. (Interrupting.) I object to this as leading.

Trial Examiner EICKHOFF. It might be helpful to bring this out.

1221 By Mr. EDISES:

Q. Didn't you on one specific day when McLaughlin took this home and then forgot it, go to Mr. McLaughlin's house, get it, and bring it back to the office?

A. I did.

Q. And that was while you were at work, wasn't it?

A. During the work hours? Just a minute! Yes; that was during the—I wouldn't know what time, but during the work hours.

Q. Did you ask for permission to get off for that purpose?

A. Did I ask for permission?

Q. Yes.

A. I don't remember; I believe I did.

Q. Whom did you ask?

A. I would ask the chief operator, or any one at his desk to get off for the purpose of seeing Mr. McLaughlin.

Q. Mr. Jorgensen is the person you are referring to?

A. Yes, sir.

Q. Do you remember whether you did ask him?

A. I believe I did.

Q. And were you docked for the time that you were out of the office?

A. No, sir.

Q. You told Mr. Jorgensen what you wanted to leave for, didn't you?

A. I believe at that time that was already completed, and
1222 was due to be—— .

Q. Just a minute. Answer my question. You told him what you wanted to leave for?

A. Yes; to get a list which the personnel had signed and which Mr. McLaughlin had—which we wanted to turn in for the company.

Q. Mr. Jorgensen knew what the list was, didn't he?

A. I don't remember whether he had seen it up to that time—I don't remember whether he did.

Q. When did you go back to work after the strike?

A. Friday. I was in the office a day after the strike was over but I didn't work. I went to work, I believe, Friday.

Q. Friday. So that you were not at work, Tuesday, Wednesday, or Thursday?

A. No.

Q. Why weren't you at work during that period?

A. I had trouble with my eyes; I had been already on leave when the strike was called.

Q. Were you docked in pay at any period during that time?

A. Yes. I was docked for the three days I was off.

Q. During the strike?

A. And the strike. But the three days I was off in addition to the strike; I was docked for Thursday—for Tuesday, Wednesday, and Thursday.

1223 Q. Were you notified to come back to work after the strike?

A. No; I was on sick leave due to eye trouble and it was understood that I would return just as soon as my eyes permitted me to go back to work.

Q. Who notified you that the strike was off?

A. No one. I came down Tuesday morning and I noticed the officer in front of the building but no pickets. I asked the officer what had happened, and he informed me that the men were upstairs working.

Q. Did you re-apply for work?

A. No, sir.

Q. You didn't fill out any kind of a formal paper of any kind?
A. No, sir.
Mr. EDISES. I have no further questions, Mr. Spanover.
Mr. MERRICK. I have one.

Cross examination by Mr. MERRICK:

Q. Mr. Spanover, you said you were a senior on the "C" man list.
A. Senior in the office.
Q. That meant if you wanted a "B" position that was open, you were automatically entitled to it unless there were reasons why the company woldn't take you in that position?
A. Yes, sir.
1224 Q. Do you know of any reason why you were given that position, other than the fact that you were the senior among the "C" operators?
A. No; there couldn't be any reason. I had turned down all former bids prior to that time before—$170 and $180 jobs, and could have had them over any men in the office. In fact, I had to fight in order to give it up.
Q. Are you having difficulty with your eyes now?
A. With my right eye, at the present time. The same trouble which I had when I was relieved from duties. It is still present but in a lesser degree.
Q. Have you worked all this week?
A. Yes; I have been working regularly.

Examination by Trial Examiner EICKHOFF:

Q. Are you married?
A. Yes.
Q. Any children?
A. One.

By Mr. MERRICK:

Q. Did Mackay Radio pay any part of your dues or initiation fee to the union at any time?
A. No, sir. If they did, I didn't know it. In fact, I haven't paid any dues excepting the check which was turned over to the ARTA by Mr. Bartlett, which, incidentally, was a gambling debt. When I told them I didn't have any money with me, he said he would
1225 pay it. I haven't paid anything in the way of dues or, in fact, any cash.
Q. Did you take any part in getting the men to go to the Bellevue Hotel the night of October 7th or 8th?
A. No, I didn't know they had a meeting. The first I heard of that was the following morning, that they had a meeting—the first that I heard was that the strike was off.
Q. Did you at any time during the strike act as a stool pigeon or a spy for the company to report on union activities?
A. No, sir.

Q. Did any representatives of the company ever ask you to keep them informed, or give them any special information about things?

A. No, sir.

Q. Did any official of the company ask you to take an active part in trying to get the men to sign up this round robin?

A. No, sir. As a matter of fact, before the strike, when I was asked to join the union, I approached Mr. Rodman and asked him whether or not a man would be in a bad place as far as the company was concerned, or would the company resent a man's joining or not joining, and he said this had nothing to do with the company; the men did as they pleased; if they wanted to join, it was all right.

Q. That was in respect to joining ARTA?

1226 A. Yes, sir.

Q. Are you particularly friendly with Mr. McLaughlin, Mr. Burtz, and Mr. Hatch?

A. No, no more than any other employee, except that I do know Mr. McLaughlin—that I have known him for several years, he being one of the older employees; and I know Mr. Hatch, having worked with him in Honolulu for the RCA; and Mr. Burtz ever since he has worked for Mackay Radio here.

Q. Did you do any picket duty during the strike?

A. Yes, sir.

Trial Examiner EICKHOFF. You weren't very enthusiastic about the strike, were you?

The WITNESS. No. In fact, one reason for not joining the union is that I told them, "Eventually you are going to strike, and eventually you are going to get in trouble; and we will all be out on a limb, and I don't think the depression is over."

I was willing to work; I was getting a pay check twice a month; and the job seemed fairly steady, and I couldn't see why we should start any rumpus.

By Mr. MERRICK:

Q. Did you have any particular feeling of animosity toward any of the leaders of ARTA during the strike?

A. No, sir. I was always friendly with them before and during the strike, and still am, as far as that is concerned.

1227 Q. Did you take any action at any time during the strike for the purpose of trying to break up the union?

A. No, sir, unless telling them that—at one informal meeting that I was at—my candid opinion—several fellows were at the union hall—that it was my opinion if they did fill up the place with outside men, I was afraid the company might not consider reinstating us, and this Wagner Bill was not as yet constitutional. We didn't know it was constitutional. At any rate, if they threw it out in the Supreme Court, it would be just too bad for the bunch of us.

I much more preferred to be back on the job and not wait until they filled up the place with other men from New York regardless of the class—"A," "B," or "C."

Q. That is the only thing you know of that you did or said that might tend to break up the union?

A. I don't think that tended to break up the union. It seemed—well, I can't say it officially—there were several coincided with my thoughts. They thought alike, but they didn't say so. That was the only thing I said at any meetings. One meeting—a regular meeting they had I said nothing, and this was the informal meeting.

Q. Did any one else at that meeting express the same sentiment you did?

A. I don't know whether they said the same thing. Mr. McLaughlin said something at that meeting. I don't recollect
1228 just what he said, but he said several things there, and I can't remember just now what they were. He may or may not have repeated what I said.

Q. Did you talk things over with Mr. McLaughlin before attending that meeting?

A. No, sir.

Q. At any time during the strike period were you acting in concert with Mr. McLaughlin?

A. In fact, I hadn't seen him but five minutes before the strike was called. He had been on leave when the strike was called. He had just returned.

Examination by Trial Examiner EICKHOFF:

Q. Well, you were of the impression that you were not the only one who thought it was a bad thing to strike under the circumstances?

A. Yes, sir. I don't remember names, but one walks with several when you are out on picket duty.

Q. Were there any gatherings of men representing your point of view before the Bellevue meeting?

A. No.

Q. That you know of?

A. No, I don't quite grasp the question.

Q. Did you get together with other fellows who looked at it the same way that you did?

A. Not as a group of individuals during the course of those
1229 two days, at one time or another, of the same viewpoint, but didn't—that is, didn't make it for a matter of public record. They would say things to me where they would be afraid to say them to somebody else because they knew I wasn't an ARTA man and knew I wouldn't express they said. They expressed the same viewpoint without my soliciting it. They expressed that viewpoint without having heard mine.

By Mr. MERRICK:

Q. You say you were at the ARTA hall on Monday evening, October 7th, for a while?

A. It was the day before the strike—Monday.

Q. Did you have any conversation with a considerable group there about going back to work?

A. There were several fellows in the anteroom, several of the employees.

Q. About how many?

A. Oh, I would say about 20. I may be wrong; maybe three or four more or less. But it looked to me like about 20; they were standing around shortly before that. A telegram had arrived saying that a certain number of men had left New York and were due to arrive here the following morning to go to work at the H. B. office; and suddenly, some how or other, a question was brought up about a round robin in New York.

I don't know just how it cropped up, or who raised it—who brought up the question; but Mr. Bash admitted there had
1230 been a round robin in circulation in the New York office, and on further questioning, admitted——

Mr. EDISES. (Interrupting.) I object to the witness characterizing the statements of admission.

Trial Examiner EICKHOFF. I think that is just a matter of language.

Mr. EDISES. Possibly a matter of language, his own or some one else's.

Trial Examiner EICKHOFF. He won't fool me, Mr. Edises.

Mr. EDISES. I know that, Mr. Examiner.

Trial Examiner EICKHOFF. Go ahead.

The WITNESS. (Continuing.) On further questioning admitted that as far as the New York office was concerned, the strike was off. The men had returned to work, practically in a body. There were a few who were still out, but so small a minority they didn't count them. Whereupon these men here who hadn't heard about this round robin, raised quite a rumpus around there and suggested going into the meeting hall and talk it over.

In the meeting hall they called an informal meeting, and Mr. Bash presided. That was the time when I took the floor and gave my viewpoint on this whole affair, and what we stood to lose if we continued fighting like we were doing, and subjecting ourselves to a lot of criticism. And incidently shortly after this,
1231 Mr. McLaughlin took the floor and he said something. That was the only time we talked about the strike or my opinion or any one else's opinion in that group.

Q. Was there any conclusion of the meeting? Any vote taken of any kind?

A. I don't—in fact in the first place—There were two meetings, this meeting that was followed by a matter of a few minutes—this meeting here, I don't remember just how it closed. It didn't officially close. It seemed they finally came to a conclusion that the men in a body should go up to the H. B. office.

Q. For what purpose?

A. I don't remember whether they were to see Mr. Jorgensen or Mr. Rodman, or whether it was for the purpose of going to work then and there. I know that ninety per cent of the men were ready to sit right down and go to work at that particular time.

On the way out, however, we were stopped in the hall, and several fellows who hadn't been at that meeting were just coming in. They wanted to know what was going on. Mr. Bash told them these men had decided that they wanted to go up to see Mr. Jorgensen about going to work. I distinctly remember that. These fellows said not to do anything hastily, but to be calm and reconsider it, and be a little more calm about it. In fact, they said, "Let's open up another meeting."

1232 We did. At that time there was ten or twelve additions in the way of members. There must have been 30 or 35 men there. It was practically a repetition of what had gone on before. They opened that meeting then. That terminated with the understanding that the question, or any questions to be brought up, should be brought up at a proper meeting, at a regular stated meeting, which was due to be called the following morning at ten a. m., and that was the way the matter rested.

Q. Did Mr. McDonough talk with you—there were occasions when he was here in San Francisco?

A. I did, but not regarding to company matters.

Q. What were you discussing?

A. Fraternal matters. He had sometime in San Francisco taken certain degrees and had not completed the degrees here; and asked me the procedure in continuing. It didn't pertain to company matters.

Q. Mr. McDonough was a former resident of San Francisco?

A. I gather he was or he wouldn't have been able to get the degrees. They required one year's residence in San Francisco.

Q. Are you a member of the same fraternal organization as Mr. McDonough?

A. Yes, but not the same lodge.

Q. Had you received a higher rank or taken degrees he

1233 hadn't?

A. I had.

Q. That is all you talked about?

A. Yes; also telling me he hoped he would stay out here long enough to complete the necessary degrees.

Mr. MERRICK. That is all.

Redirect examination by Mr. EDISES:

Q. Mr. Spanover, are you familiar with the practice at the H. B. office whereby, when a man is promoted from one grade to a higher grade, he first goes on the night shift?

A. I am.

Q. Did that happen in the case of your promotion?

A. There was not when that particular promotion—there wasn't any night job open. The bid specified that there was not to be any change in hours, and anybody could bid for it; and that was the only reason I did bid for that, because there was no change in hours. The change wasn't to be made until, I presume, the outcome of this case so they would know what changes would be made permanently, if any.

Q. Where did you get that information?

A. On the bulletin board.

Q. Do you know of any other exceptions to that rule?

Mr. MERRICK. I object to your characterizing this as an exception to this rule.

1234 Trial Examiner EICKHOFF. That is true.

By Mr. EDISES:

Q. Do you know of any other instance where a man went from one grade directly to another grade?

A. Yes, I reversed the action and went back to $160 from $180.

Q. When was that?

A. Some few years ago. There weren't any classes at the time.

Q. Oh, yes; I mean since the classes have gone into operation?

A. Since the classes?

Q. Where the men had moved from one day shift to a higher grade without going through a night shift?

A. Why, yes, all of these men moved in there; they started sometime after that. When these ratings had started, several changes had been made, and the men moved.

Q. I am not referring to when the ratings were started. I am referring to after the rating went into effect. Do you know of any instance where a man after that went to the day shift of one grade directly to a day shift of another grade?

A. I can't say that I do.

Q. You have referred to this meeting on Monday, and stated that certain men expressed themselves as dissatisfied with the strike, and anxious to go back to work. You named, I believe, Mr
1235 McLaughlin and yourself. Now, who else expressed themselves in that way?

A. In that way?

Q. Yes.

A. Well, several were on the floor—I don't remember names, but I remember what they said.

Q. I am not interested in what they said; I want to know their names.

A. Mr. Ludlam took the floor.

Q. You don't remember what Mr. Ludlam said. Do you know the names of any other persons who expressed themselves as being dissatisfied with the strike and wanted to go back to work? Let's leave Mr. Ludlam out, if you don't remember what he said.

A. Mr. Barlow.

Q. Who else?

A. I don't remember. There were several had the floor at that time but I can't for the life of me remember just now who did and who did not; but the fact that they all in that body went down, they must at the time. I don't remember just how it was brought about, whether by vote or not, but I believe there was some agreement there—some understanding whereby the men knew they wanted to go to work, and I don't remember whether they expressed it in words or in what words—but as a body they went down there, Mr. Bash leading the parade; so Bash would remember, I believe, just
1236 who spoke and how it came up.

Q. Where did you go?

A. We didn't go; we just got as far as the front door. We were on our way up to the office.

Q. When you left the meeting Monday it was definitely understood that nothing was to be done in that connection until the following morning, until ten o'clock?

A. Yes.

Q. Was that clearly understood by the persons at that meeting?

A. As far as I was concerned, it was—that there wouldn't be any further action until the following morning at ten o'clock in the regular stated meeting.

Q. Do you remember any other fellows whom you spoke to on the picket line who privately stated to you as you have indicated, that they were opposed to the strike and wanted to go back to work?

A. No, I don't remember any one, in fact.

Q. Do you remember any particular time and place where you spoke to some one in that connection?

A. Around the building, but the particular time——

Q. (Interrupting). It is all very hazy in your mind?

A. No, except names. I wouldn't want to name any one.

Q. Don't be afraid of naming any one.

A. I wouldn't want to name any one and find——

1237 Mr. MERRICK (Interrupting.) Better have Mr. Wagenet give the assurance of the National Labor Board that all the persons named here be protected by any action by the company, and any action that might be taken on the union, or resentment that their names were mentioned.

Trial Examiner EICKHOFF. I wouldn't permit him to make any such statement.

Mr. MERRICK. He did in the case of a previous witness.

Trial Examiner EICKHOFF. He made no such statement in my presence or during a session. If you can find it in the record, you are asked to call my attention to it.

Mr. MERRICK. It was in this room.

By Mr. EDISES:

Q. Mr. Spanover, is it that you don't want to tell the names of these men or you don't remember?

A. I don't remember. I spoke to several men and every one spoke about one thing or another, and I wouldn't want to attribute that particular statement to any one.

Q. One of them did make the statement?

Trial Examiner EICKHOFF. That question has been asked and answered, Mr. Edises. He doesn't remember. Make what you please of it.

Mr. EDISES. Surely.

By Mr. EDISES:

Q. Now, you spoke to McDonough a number of times, didn't you?

A. Yes; sir.

1238 Q. Did you ever speak to him about anything other than your fraternal affairs?

A. No. Once he spoke to me, and simply mentioned at the time what was going on, what had gone on in New York. It was right at the termination of the strike; but I wasn't overly enthused about listening to it, and I didn't pay much attention to it.

Q. Do you remember what he said?

A. That the men had got together and decided that they wanted a board appointed by the men themselves—fellow workers representing them. I didn't listen to it all; that was the idea.

Q. Did he say that the men in New York had signed a round robin about repudiating ARTA?

A. I don't think he mentioned a round robin at all.

Trial Examiner EICKHOFF. We will take a five minute recess.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Mr. EDISES. Mr. Reporter, will you read the last question and answer?

(The question and answer referred to were read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Will you state just how he did refer to what was going on in New York?

1239 A. Yes. He said that they had—they had come to an agreement among the men who they were to appoint or elect, some of the men of the personnel of M. K. office—the New York office, to represent them; and I guess that is as far as he went.

Q. Did he say what he had to do with it himself?

A. No. No, he simply referred to it as the men in New York.

Q. Do you remember whether he said anything about—whether he thought it would be a pretty good thing to have something like that in San Francisco?

A. Well, it looked to me as if he was waiting for me to lead, and I wasn't interested enough.

Q. Can you tell me what you meant by "waiting for me to lead"?

A. After telling me he waited for some remark like, "All right,"—or "All right, but as far as the situation is concerned, I don't know what the men will do."

Q. You gathered he was trying to bring up the subject to starting a similar thing in San Francisco?

A. No, he might—I don't know what he——

Q. (Interrupting.) Waiting for you to bring up the subject?

A. Then perhaps not—perhaps he just wanted me to say something about it.

Trial Examiner EICKHOFF. You had the impression he
1240 was trying to draw you out?

The WITNESS. No, sir. I don't know just what he brought that up for, but he did say it. I was working on a circuit while he was talking to me, so it didn't get very far. Whether he brought that out for that purpose—for the purpose of having me come back with something favorable to that plan, or mentioning that it would be a good plan in San Francisco, I don't know, but that is as far as it got.

By Mr. EDISES:

Q. That was all you spoke about in that conversation?

A. That is all.

Q. You didn't talk about fraternal matters in that conversation?

A. That is the only instance we spoke outside fraternal matters. That didn't last over a minute.

Q. Mr. Spanover, have you any knowledge whatever, other than what you have indicated, as to where that round robin came from?

A. No; hearsay, that is all.

Q. What have you heard on the subject?

A. I know it was started by the men in the office.

Q. Do you know what men were mentioned as being the originators of it?

A. On several occasions they mentioned several different names, and I don't remember half of the names they mentioned.

1241 Q. Not all of them?

A. If I remember the names—it seemed like every one in the office had something to do with the writing of it. It was inferred by some that I wrote it.

Q. You mean you were told—accused of having written it, is that it?

A. Well, I was asked by one or two men, "Did you write this?" I said, "No."

It was passed to me, I remember it, and I signed it.

Q. What other names did you hear mentioned?

Trial Examiner EICKHOFF. I don't think I am going to permit that, Mr. Edises. It is too vague.

Mr. EDISES. No further questions, Mr. Examiner.

Mr. MERRICK. No further questions.

Trial Examiner EICKHOFF. May this witness be excused?

Mr. EDISES. Thank you, Mr. Spanover.

The WITNESS. You are welcome.

Trial Examiner EICKHOFF. Call your next witness.

Mr. EDISES. Mr. Jorgensen.

ANDREW JORGENSEN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination by Mr. EDISES:

Q. What is your name?

A. Andrew Jorgensen.

1242 Q. And your address?

A. 1077 Lombard Street, San Francisco.

Mr. EDISES. I want to state to you, Mr. Examiner, the request that I be permitted to question Mr. Jorgensen as an adverse witness.

Trial Examiner EICKHOFF. Well, ask him what his capacity is with the company.

By Mr. EDISES:

Q. What is your capacity with the Mackay Radio Company?

A. Traffic manager, H. B.

Q. Will you describe the nature of your duties and responsibilities as traffic manager?

A. Well, my prime duty is to see that all telegrams are sent and received in the least possible time, and as accurately as possible. I have general charge of the H. B. operating room. I hire and fire operators, and I have general supervision of all the men working there, including the supervisors, operating electricians, operators, and clerks.

Trial Examiner EICKHOFF. I will permit you to examine the witness as in the case of an adverse witness.

By Mr. EDISES:

Q. When did you go to work for Mackay Radio?

A. June 1924.

Q. And what was your position?

A. I started as an operator.

1243 Q. You were promoted when?

A. You mean I received an increase in pay?

Q. Well, yes. When did you first receive an increase in pay?

A. I think in 1930.

Q. And did you receive any further increases?

A. Yes.

Trial Examiner EICKHOFF. Now, is it material whether this witness—to go through the various increases this witness got?

Mr. EDISES. I think that I can shortcut that by asking:

By Mr. EDISES:

Q. When did you receive your appointment as chief operator, or traffic manager?

A. On July 1934.

Q. Did you ever have any correspondence with the union in regard to pay or working conditions? I am referring to ARTA.

A. I had some correspondence with Mr. Salisbury; whether it was in regard to pay or not, I can't say. But I can produce the letter. I don't think I had more than one letter from the union.

Q. Did you every carry on any negotiations of any kind with the union in regard to hours, wages, or working conditions?

1244 A. With the union? No, sir.

Q. You have heard the testimony of Mr. Hatch?

A. I have.

Q. In regard to the circumstances surrounding the meeting at the Bellevue?

A. I have.

Q. When did you first speak to Mr. Hatch in regard to the Mackay strike, or the proposed Mackay strike?

A. I don't remember having spoken to Mr. Hatch about the proposed strike.

Q. Did you ever speak to him prior to the time that the office walked out? Did you ever speak to him about the threatened strike at all?

A. I don't recollect. I may have spoke to a number of men. We all knew there was something in the wind, but not particularly.

Q. You had breakfast with Mr. Hatch customarily?

A. It was merely by accident. I lived down the Peninsula, and took a train that arrived about 8:30 every morning, and I went into Foster's to breakfast. And Mr. Hatch was there when I came and I sat down with him.

Q. That was a regular thing with you?

A. Whenever he was there. I didn't go out of my way to have breakfast with him.

Q. You heard Mr. Hatch's testimony that you were usually

1245 alone on those occasions?

A. Yes, I came right from the train.

Q. And did you occasionally discuss questions of relations with the men?

A. No, I didn't. Our conversations were mostly about the work at H. B. Mr. Hatch, naturally, was closely associated with me in the office in regards to frequencies and traffic handled. I had a great deal—or rather, Mr. Hatch a great deal to do with me in regard to those matters—of a shop nature.

Q. Did you phone Mr. Hatch about 3:15 a. m. Saturday morning, October 5?

A. I did.

Q. What was your purpose in phoning him?

A. To try to get him back to work.

Q. That was not his usual working hours?

A. No, but there was a strike on.

Q. What did you want him for?

A. I wanted everybody.

Q. How many others did you phone that morning in addition to Mr. Hatch?

A. I couldn't say the number, but I started phoning about 1 o'clock and by 4 o'clock I could hardly speak any more. My voice had gone, I called so many operators and clerks and supervisors.

1246 Q. Do you recall the names of any particular operators that you phoned?

A. Yes; I do.

Q. Can you name some of them?

A. I started out calling the supervisors, I should say about 1 o'clock, and I think the first operator I called was Mr. Bartlett. I called Mr. McKercher, who is a supervisor, and he told me he would confer with Mr. Barlett and to see if he was to come back to work. That was the reason I called Mr. Bartlett first.

He said, "Have you seen McKercher?"

They didn't know whether they would come, but they would call me later.

Q. Now, did you phone any of the eleven men whose names you subsequently put on the list?

A. I know I didn't phone some of them, because I had seen them down in the lobby when I came to work about midnight, and I knew I couldn't get ahold of them; and I knew as long as they were down there, why; obviously, they wouldn't return to work.

Q. So that you didn't phone any of the men on the list?

A. I wouldn't say that. The ones that were downstairs, I remember seeing—let's see—Bash, Stocklin, Rone, and Palmer—those three or four, I am not quite sure because I went through in a rather hurry.

1247 Q. You didn't phone any of them?

A. No.

Q. How about the others on the list?

A. Well, I went through my list systematically. I have a card index on which I keep all the addresses and telephone numbers of all the men that work there; and after having called all the supervisors and received their assurance that they would be there, with the exception of McLaughlin, who was on vacation—they all assured me they would come.

Q. Where?

A. To work. I started phoning all the operators and operating electricians. They were all arranged alphabetically and, I believe, I went right down the list. I started with "A" and went right down the line.

Q. Did any of these men that you phoned actually come to work?

A. No; they all promised to come. Some of them promised they would call back and let me know. None ever called me back, I believe.

Q. Did you ask any of the men to try to get others—to try to get others to come back to work?

A. Did I what?

Q. Did you ask any of the men to try to get others to come back to work?

A. No, I don't think I did.

1248 Q. Do you recall exactly what you said in your conversation with Mr. Hatch?

A. Yes. I heard his testimony, and I can only say that is about the way I recall it. I remember particularly he said, "Even if there weren't a strike," he couldn't come while the men were out.

Q. And you asked him to phone you the next morning?

A. I did. I asked everybody that didn't want to come to work—to come back to work at once.

Q. Mr. Jorgensen, what is the significance of the various classes of operators?

A. Well, there are four classes: "A," "B," "C" and "D," and "E." I should say five classes.

Class "A" operators are generally assigned to circuits that require a little more experience than the others. It takes a good operator—that is, a first class operator.

A Class "B" operator is practically—is practically a class "A" operator, but not quite so good an operator; and "B" are assigned only to trans-Pacific and transcontinental circuits.

Q. What is the reason for that?

A. That, I believe, was settled in the conference with Mr. Tuel in 1924, on account of their being 48 hour a week basis. Class "C" and "D" are assigned to trunk line circuits where they only work 44 hours a week.

1249 Q. In other words, the various classes have a definite relation to efficiency and ability?

A. That is right; yes.

Q. Is it likewise true that class "A" receives more pay than "B" and so on down?

A. Oh, yes.

Q. Do you keep the record of the errors that an operator makes?

A. I do.

Q. You do personally?

A. Yes; I keep the records in my files.

Q. Just how is that error record compiled? How do you trace the record—the error?

A. That error record is not complete at all. It is only the errors that come to my attention either through wires received from other offices, or through errors called to my attention through supervisors or by complaints of customers.

Q. Is there a difference in the error records as between the trans-Pacific and transcontinental on the one hand, and the coastwise circuits on the other?

Trial Examiner EICKHOFF. What do you mean by that?

The WITNESS. Difference?

By Mr. EDISES:

Q. Let me qualify that. Is there a greater likelihood of errors being reported and listed in your record in the case of the
1250 transcontinental and trans-Pacific circuits than in the case of the coastwise circuits?

A. I might say yes to that, because I believe that every error that is made on a trans-Pacific circuit is called to the attention of the sender.

In other words, if a telegram goes to Shanghai and it is reported back, it automatically would go through my hands, and be investigated; but there are a great many errors made on the transcontinental and coastwise that would not—they will be little, petty errors that wouldn't be investigated.

Q. Isn't it a fact that in the case of coastwise, that practically the only time an error is noted on a man's record is when someone makes a complaint, or files a damage suit?

A. No; I wouldn't say that. There isn't a great deal of difference in the errors the way they are handed to me on any of the circuits. There might be a slight difference on the transcontinental circuits, I would say.

Q. What happens when a man's error is reported?

A. It is investigated and I determine who has made the error. If the error is made by a man in the H. B. office it is called to his attention. If it is serious, he is asked for an explanation or statement, and if it is not a serious error he is merely notified that to note—that to note that the matter will be charged to his record.

Q. If a class "A" operator should commit a series of fla-
1251 grant errors, would he be subject to demotion or discharge?

A. Anyone would.

Q. And before the man was demoted or discharged would he have the reasons explained to him?

A. He would.

Q. Is that it?

A. I have never discharged a man for errors without giving him a fair warning at first that if more errors occurred that disciplinary action would be taken.

Q. Before a man is actually discharged, he is informed of the reason for his discharge and given an opportunity to talk it over with you, is that correct?

A. Yes.

Q. What is the basis on which a man's promotions or demotions are founded? What is it, I think——

Trial Examiner EICKHOFF. (Interrupting.) Let's take one at a time. Let us take promotions.

By Mr. EDISES:

Q. Yes; let us take promotions first. How do you determine when a man is eligible for promotion?

A. To what do you mean?

Q. From a lower grade of operator to a higher grade.
A. It is generally put up for a bid.
Q. Will you explain that?
A. If there is a vacancy in a class, it is posted on a bulletin board, that bids will be received for such and such a class at such and such a salary; and the men are permitted to bid.
1252 Q. Of what does the bidding consist?
A. In merely placing a sign—each operator has a sign, one or two letters, for the purpose of identifying telegrams that he has received or sent. His sign is placed on the bulletin that is put on the board.
Q. That means he wants the position?
A. Yes.
Q. How do you determine who gets it?
A. That is there for three days at least, then it is taken down. There are several rules there that govern the bidding system, but in the final analysis I have the deciding say whether any man that bid should have the job.
Q. And what considerations determine with you the question of who gets the job, who gets the promotion.
A. Well, I can say his ability first, and second, the seniority. As a general rule, I submit this particular bulletin that has been put up to all the supervisors and ask their advice as to whom is the best fitted man for the job. If there is a tie, I generally decide myself.
Q. Can you give an estimate of what the most important factor is in determining who get the promotion?
A. I don't need an estimate. Ability counts.
Q. You know?
A. Ability counts first.
Q. Ability counts first?
1253 A. Yes.
Q. You would say all other factors were subordinate to the question of ability?
A. No, I wouldn't say that. In connection with the ability, there are the things that enter—a man may be a very fine operator and still not be considered as able and—I shouldn't say able, but he may not be considered suitable for a certain job as another man. That is a thing that can only be determined if you know the men more or less. I have known and seen their work for a long time.
Q. Did you ever permit questions of your personal feeling of hostility or friendliness to enter into the question of a promotion?
A. I never have.
Q. Can you further analyze this question of ability and state what it consists of? For example, what part does the number of errors permitted have to do with the question of the man's ability?
A. The number of errors—that is flexible question. A man might have 20 errors on his record, and another man might have one error, and still that one error would be more serious than the 20 others.

In other words, a man might be charged with 20 errors that wouldn't be as much as one that caused a claim on the company for money refunded.

Q. Would a person be permitted to remain at a Class "A"
1254 position if he were guilty of a series of flagrant errors?

A. No, I don't say that.

Q. Would he be permitted to remain at his position if he were guilty of one serious error?

A. Yes, that has been done. I wouldn't connect this particularly with the class "A" job. If there is anything that happens it is generally considered on its own merits. In other words, where there is a man who has committed a very serious error, it would be considered under the circumstances under which that error was committed.

It is given a great deal of thought when disciplinary action that drastic is contemplated.

Q. Have you listed now, or stated all of the reasons which went into the determination of whether a man was going to be promoted or not? What other factors?

A. Yes, I think I have.

Q. Did the question of a man's home life have anything to do with it?

A. Home life?

Q. Yes.

A. No, I don't know much about the operators' home lives.

Q. Did the question of a man's religious beliefs have anything to do with it?

A. No.

Q. The question of a man's political beliefs have anything
1255 to do with it?

A. No, I have never had occasion to consider it.

Q. Now, Mr. Hatch testified that he phoned you somewhere around 9 o'clock on the evening of October 7th. Where were you at that time?

A. Closer to 10 o'clock, I believe.

Q. Closer to 10? Where were you at the time?

A. I was in the office.

Q. What were you doing?

A. I was in the office between Mr. Rodman's and Captain Dodd's office.

Q. What were you doing at the time?

A. I was just about to go home.

Q. What had you been doing?

A. It is pretty hard to say.

Trial Examiner EICKHOFF. Does it make any difference?

Mr. EDISES. If he can answer briefly, I would like to have the answer in the record.

A. It is pretty hard to say what I was doing at that particular moment or that evening. There was a pretty bad mess up there. I

had all kinds of duties there. I wouldn't attempt to say what I had been doing at that particular time.

Q. Who else was present in the office at that time?

A. I don't think any one was present at that time.

Q. Was any other official of the company present in the
1257 building at that time?

A. Oh, yes.

Q. Who?

A. Mr. Rodman, in the next office.

Q. At the time the phone call was received?

A. Yes, sir.

Q. Now, can you relate what was said in that phone conversation?

A. Yes. Mr. Hatch called me up and said that he wanted to know if I would be willing to state if a number of men should want to come back to work, if I would be willing to come and state the company's position in regards to their coming back to work; if there would be any restrictions as to their coming back to work.

And I told him to wait a minute. I put down the phone and I went into Mr. Rodman's office, and I told Mr. Rodman that the man—that if the men should want to return to work, should I take them back.

Mr. Rodman said, "By all means.".

He said, "But remember, you are to take care of the men from New York and Los Angeles, but handle that in your own way."

So I went back and I told Mr. Hatch that I would come out to
see him and state the company's position. As far as I can
1258 remember, I said that the men could return to work, but there would be some restrictions. I had rather talk to him personally. I wouldn't want to discuss that over the phone.

I think that is as closely as I can remember.

Q. Have you stated everything that was said between you and Mr. Rodman at the time?

A. Yes.

Q. He said you could determine who was to go on the list in your own way?

A. He didn't say that.

Q. I am sorry if I misunderstood.

A. He said, "By all means take them back, but remember you are to take care of the men from New York and Los Angeles."

Q. Did he amplify that?

A. No, I rushed back to the phone.

Trial Examiner EICKHOFF. He said to handle it in your own way?

The WITNESS. Yes.

By Mr. EDISES:

Q. What did you understand him to mean "remember we have to take care of the men from Los Angeles and New York?"

A. During the strike a number of men from Los Angeles had come to H. B. already, and seven men from New York, and two

from Chicago were on their way out here. It was definitely understood that if any of those men, or if all of those men
1259 wanted to remain here after the strike was over, they were to be kept here. Therefore we would have too many operators here if all the other men were taken back that went out on strike.

Q. Now, how many men were on their way to San Francisco from New York?

A. Seven.

Q. How many from Los Angeles?

A. They were already here.

Q. Already here?

A. Yes.

Q. That makes nine?

A. Yes.

Q. Of those nine, how many are presently working for the H. B.?

A. You mean——

Q. (Interrupting.) At the present time of those nine who were on their way out, how many are now working at the H. B. office?

A. There is one—two——

Trial Examiner EICKHOFF. Just count to yourself, Mr. Jorgensen.

The WITNESS. I am trying to think. Three of the ones from New York, two from New York, and one from Chicago. There is
1260 one man from Chicago didn't come out originally. That man who is here from Chicago now transferred from Chicago recently.

By Mr. EDISES:

Q. So this man from Chicago was not one of the original nine?

A. No.

Q. Of the original nine, there are just two now working at the H. B. office?

A. Two; and then there is one from Los Angeles, which makes it three.

Q. Was this one from Los Angeles one of the original two who was scheduled to come from Los Angeles?

A. No, there were more coming from Los Angeles, and so far as I know, only two wanted to remain. Subsequently only one wanted to remain, but I didn't find that out at that time.

Trial Examiner EICKHOFF. I think I will have to interrupt now, Mr. Edises. We will recess until tomorrow morning at 10 o'clock.

(Thereupon, at 4:10 o'clock p. m., the hearing in the above entitled cause was adjourned until 10:00 o'clock a. m., Friday December 13, 1935.)

1261 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA
Friday, December 13, 1935.

Met pursuant to adjournment at 10:15 o'clock a. m.

Trial Examiner EICKHOFF. You may proceed.

ANDREW JORGENSEN, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Mr. EDISES. May we have the last question and answer, Mr. Reporter?

1262 (The last question and answer referred to were read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Mr. Jorgensen, did you know which members of the H. B. and F. X. operating force belonged to the union?

A. I had a list from Mr. Salisbury. I think it was last March he gave me a list of all the members, but after that time I didn't pay any attention to it. As a matter of fact, I filed that list away in my files and I never looked at it since. I didn't pay any attention as to who were members and who were not.

Q. Did you know who were the members of the Grievance or Relations Committee?

A. Yes. Mr. Salisbury had written me a letter and advised me as to that.

Q. And those members were whom?

A. I think they were——

Mr. MERRICK. (Interrupting.) As of what time?

By Mr. EDISES:

Q. Subsequent to, say, February 1935.

A. As far as I remember, they were Palmer, Martinelli, and Bash.

Q. Did you have any information as to what was going on in the union?

A. No.

Q. You had an idea, did you not, as to who was most active in the union?

1263 A. I didn't pay much attention to it. I knew who was on the Relations Committee, and I knew who were on the Administrative Committee, as I had been informed by Mr. Salisbury; otherwise I don't know who was active.

Q. You knew who was active in conducting negotiations with the company, didn't you?

A. Oh, yes.

Q. Now, do you have the sole responsibility for hiring and discharging operators?

A. I have the sole responsibility, but as a general rule, when it comes to cases where a man is going to be discharged, if it is a special case, I generally ask for advice from my superior.

Q. Being Mr. Rodman?

A. Well, generally Captain Dodd.

Q. Captain Dodd?

A. Yes.

Q. However, it isn't necessary for New York to give its O. K. before you can hire an operator, is it?

A. It is not necessary for New York to give an O. K. before I hire him, but he is not permanently hired before New York has approved.

Q. Is that an invariable rule in your practice?

A. An invariable rule; yes, sir.

Trial Examiner EICKHOFF. Does he understand, when he
1264 goes to work, that his status is temporary until New York has confirmed the employment?

The WITNESS. No, it is generally confirmed in a routine manner. It is generally understood, if a man is put on, he is told when he is put on whether he will be permanent or temporary. As a matter of fact, I tell him he won't be permanent until I get the confirmation from New York.

By Mr. EDISES:

Q. And do you always tell every operator that you hire that his application must first be passed on by New York?

A. No; I don't.

Q. Do you ever tell them that?

A. I don't know as I have ever told them.

Trial Examiner EICKHOFF. Except after the strike?

The WITNESS. Yes; except after the strike.

By Mr. EDISES:

Q. Did you ever discuss with Mr. Rodman or Captain Dodd, prior to Mr. Hatch's phone call on Monday evening, what operators should be refused to be taken back in the event that the men returned to work?

A. In the afternoon of Monday, the 7th, October 7th, we discussed almost every man in the H. B. office. At the time we knew there would probably be some places that couldn't be filled by men returning to work.

Q. And you anticipated at that time that the men were going to return to work very shortly?

1265 A. No; I wouldn't say that; we were hoping that they were.

Q. What was the immediate cause of this conference that you just mentioned?

A. Well, there wasn't any formal conference. It was—that was the time we found out there were some men coming out from New York, and we also found out that these men, if they wanted to remain, as well as those from Los Angeles, that they would have a right to stay. In other words, their saying here must be taken care of first.

Q. And who was present at this discussion?

A. I don't believe there was anybody there but myself, Mr. Rodman and myself.

Q. Mr. Rodman and yourself?

A. Yes.

Q. And you went over the names of all of the men who were out on strike?

A. I wouldn't say we went over the names; we merely discussed, I would say, probably more or less all of the men in a general way.

Q. And you came to a conclusion as to who would not be taken back, is that correct?

A. No, sir.

Q. Well, will you relate just what took place in that discussion?

A. Well, it is hard to say. It was a general discussion.
1266 We merely discussed every man separately that we could think of, as to his qualifications and past record.

Q. Did you come to any conclusions at all?

A. No; we didn't. When it comes to matters of that kind, I am generally given a free hand.

Q. Didn't Mr. Rodman indicate any preferences as to men who should not be taken back in the event it was necessary to exclude certain of the men?

A. No; not that I remember.

Q. Do you mean to say that each of the men was considered to be equally qualified to return to work?

A. No; I don't think so. Naturally, in a bunch of men of six or seven men, some of them are less qualified than others, and everybody knows it.

Q. Which men on the list did you and Mr. Rodman determine were the least qualified to return to work?

Mr. MERRICK. Referring to what list, the full list of employes?

Mr. EDISES. I am speaking now of the discussion that he had with Mr. Rodman on Monday afternoon.

Mr. MERRICK. There has been so much reference to the list, meaning the eleven men, I want to be sure the witness understands what list you are talking about.

Mr. EDISES. Entire complement of men at the H. B. and F. X. operating rooms.

1267 A. I had nothing to do with the F. X.

By Mr. EDISES:

Q. Then confine it to the H. B.

A. The H. B.—I wouldn't want to state; I couldn't be sure.

Q. Well, what was the upshot of your conference with Mr. Rodman on that afternoon?

A. Well, there was nothing came out of it. We merely discussed the whole force in a general way.

Examination by Trial Examiner EICKHOFF:

Q. Did you discuss any of those men with reference to the strike?

A. With reference to the strike?

Q. Yes.

A. No.

Q. Or their activities in the strike?

A. No.

Q. Or their activities in bringing it about?

A. No.

Q. You avoided that subject altogether?

A. Well, I don't remember it coming up. We were merely concerned with the efficiency of the operating room.

Q. And your testimony would be that you, in discussing these men, didn't mention or discuss their position with reference to the strike?

A. No; we didn't.

1268 By Mr. EDISES:

Q. Well, were any men selected or indicated as being the ones likely to be refused reemployment?

A. No; it was left more or less just as a general discussion.

Q. Were any men at all discussed at particular length?

A. No; I don't remember that there were.

Q. Did you give special attention to any particular man or group of men?

A. No. It wasn't much of a conference, as I say. It was merely mentioned that certain men probably could not go back to work because of these men coming out from the East and coming from Los Angeles.

Q. Which men are you referring to? You have referred to certain men.

A. That there would be a number of men that probably couldn't go back to work as we had to provide jobs for the men coming from the East and from Los Angeles.

Q. But when you concluded this session with Mr. Rodman you had no idea at all as to what men would not be taken back when the eastern men arrived?

A. No; we didn't, because we didn't know the men were coming back in the near future. We had no idea when the men were coming back, if they were coming back.

Examination by Trial Examiner EICKHOFF:

1269 Q. Weren't you at all bitter toward the strike?

A. No; I can't say I was.

Q. Was Mr. Rodman?

A. I don't think so. I wouldn't say as to his feelings.

Q. The business of the office had been disrupted.

A. I know that; naturally I was concerned about it, but I can't say I was bitter toward the strike. Everybody had gone out. Of course, it was a mess, but I can't say I was bitter against it.

Q. Did you think the strike was fair and justified?

A. No; I couldn't say it was. I personally didn't think so.

Q. It seems strange to me that during the strike, and while discussing these men, you should not have discussed them at all with reference to the strike.

A. Well, I have never felt that way. I wouldn't say I felt bitter toward the strike at all, probably because all the men went out in a

body. If there had just been half of them that went out, or so, I might have felt differently. As a matter of fact, I didn't quite understand why the strike came.

Q. You thought the strike was unjustified and unfair?

A. I did.

Q. And yet you didn't feel that any of those who had brought
1270 it about were unfair, and you have no feeling against them?

A. I considered them as a body. I wouldn't single out any one. I had known the men for a number of years, and considered them more or less my friends, and couldn't feel bitter toward them all as a whole, or toward any one in particular.

Q. Did you feel that they were unanimously behind the strike?

A. No; I didn't. I knew they weren't.

Q. That would place the responsibility on some group less than the whole group, wouldn't it?

A. Not necessarily the responsibility. I found out the morning that I called the men, on the Saturday morning, that half of the men, that is half of the ones I called, didn't know about the strike at all, and they were all surprised and wanted to know what it was all about. Therefore I felt they couldn't be responsible for it if they didn't know that the strike was on at all.

By Mr. EDISES:

Q. You testified, I believe, that there were certain men whom you didn't even try to call on Saturday morning. Is that correct?

A. That is right.

Q. Am I correct in stating that the men who were subsequently on the list were among those whom you didn't even try to call?

1271 A. I believe there were two or three. I think it was Bash, Palmer, and Rone.

Q. That you didn't try to call?

A. That I didn't because they were downstairs. I knew there was no use phoning when they were downstairs.

Q. Well, did you try to speak to them to ask them to come back to work?

A. When I came back it was two minutes to twelve and I walked through and upstairs to see what was going on.

Q. But you made no effort to ask either of these three men to return to work?

A. There must have been about 20 there. There was no particular reason to single out anybody there.

Q. Why have you singled out Rone, Bash, and Palmer?

A. I haven't singled them out as I know of.

Q. You knew that strike breakers were coming from the East, didn't you?

A. I did. I wouldn't call them strike breakers.

Q. What would you call them?

A. Mackay Radio employes.

Q. Loyal employes?

A. Loyal employes.

Q. Yes. Did you anticipate that there might be some friction or trouble between the loyal employes and the strikers?

A. Did I anticipate it?

1272 Q. Yes.

A. As a matter of fact, I didn't give it any thought. I didn't have anything to do with bringing them out here either from the East or from Los Angeles.

Q. You knew, did you not, or you had been informed that a group of strikers were preparing to meet the incoming plane from New York?

A. I was informed about that, you say?

Q. Yes.

A. I don't know—I wasn't informed. I might have known about it, and I don't know whether I heard about it at the time, or later.

Q. Is it possible that you could have known about it at the time or shortly afterwards?

A. It is.

Q. Can you remember definitely whether you heard about that at the time or not?

A. No.

Mr. MERRICK. I think Mr. Edises' question isn't intended. He said something about a carload of strikebreakers. I believe, before he continues, he ought to clarify that question.

Mr. EDISES. Planeload.

Mr. MERRICK. You said: "Did you know about sending a carload of strike breakers down to meet the plane?"

1273 Mr. EDISES. I meant a planeload. You are confusing my question yourself, Mr. Merrick.

Trial Examiner EICKHOFF. Then restate it.

By Mr. EDISES:

Q. You have stated that you knew that certain loyal employees were coming from the East on a plane. Is that right?

A. Yes.

Q. And you also know now that certain strikers intended to go down and meet the plane; is that right?

A. I don't know it. I heard it.

Q. You heard it?

A. Yes.

Q. Do you know who you heard it from?

A. No, I can't say.

Q. Could it have been——

A. (Interrupting.) I don't know whether I heard it at that time or whether I heard it later.

Q. You are testifying then that you have no feeling of hostility whatever toward any of the men in connection with the strike?

A. No, I wouldn't say that. There was a possibility of trouble and hostility of some kind.

Q. Did you have a feeling of hostility towards some of the men, or at least a feeling of resentment toward certain of the men?

1274 A. Did I have a feeling?

Q. Yes.

A. No.

Q. You didn't feel the slightest resentment toward any of the strikers, or their leaders?

A. I did not. I walked in and out and spoke to them all wherever I went, in and out of the picket line, and they were there on duty. They all spoke to me and I spoke to them.

Q. During your conversation with Mr. Rodman did you gather that he had not the slightest feeling of resentment toward any of the strikers or their leaders?

A. I cannot say that. He probably did.

Q. Did he mention any man or group of men in a way which would indicate that he felt resentful toward them?

A. No, I wouldn't say that.

Q. Isn't it a fact, Mr. Jorgensen, that he spoke rather bitterly of Mr. Bash?

A. At the time?

Q. At the time.

A. I don't remember Mr. Rodman ever mentioning Mr. Bash to me during the strike. We didn't have much—I was more or less in the operating room all the time. Mr. Rodman was on the phone most of the time. We didn't have time to discuss those things.

1275 Q. Did he ever mention Mr. Loudermilk in a resentful manner?

A. Well——

Mr. MERRICK. (Interrupting.) Did he ever? Hadn't he better confine it to the particular time.

Trial Examiner ECKHOFF. Yes.

By Mr. EDISES:

Q. During the period of the strike.

A. Mr. Loudermilk?

Q. Yes.

A. No, I don't remember his expressing to me any particular resentment against anybody.

Q. Do you recall his ever having mentioned Mr. Loudermilk during the period of the strike?

A. I don't particularly. He may have; there is no doubt he has.

Q. Did Mr. Loudermilk's name come up at all while you were discussing the employees who would not be taken back to work?

A. I don't remember any particular one. As I said, it was a general discussion. We went through the line and no doubt Loudermilk was discussed with the rest of them.

Q. Mr. Jorgensen, can you remember a single thing that was said about any of the men at the H. B. operating room during your conference with Mr. Rodman?

A. Yes; I can.

Q. Well, tell me one thing which will indicate that you
1276 have that conference in mind?

Q. I can remember there was an operator by the name of Humphreys.

Q. What was said about Humphreys?

A. I told Rodman that Humphreys, while he used to be and was a very good manual operator, that he had never come up to my expectations as far as tape operation was concerned.

Q. What did Mr. Rodman say to that?

Trial Examiner EICKHOFF. I am not particularly interested in what was said by Humphreys, or about Humphreys.

Mr. EDISES. Humphreys was on the list.

Trial Examiner EICKHOFF. He was on the list?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. But not one of those in the case?

Mr. EDISES. No.

By Mr. EDISES:

Q. What did Mr. Rodman say to that?

A. I don't remember what he said to it. We were just discussing the men.

Q. Was Mr. Humphreys a class "A" operator?

A. Class "B" operator.

Q. "B"?

A. Yes.

Q. Did the question of the rate of pay have anything to do with the determining of who was not to come back to work?

1277 A. No.

Q. Did the question of their political beliefs enter into it at all?

A. No. I don't know the political belief of anybody.

Q. Do you remember any other particular points that were discussed at that time?

A. Yes. I remember Palmer was mentioned.

Q. What was said about Palmer?

A. Palmer was discussed, and I mentioned the fact that he had been quite a chronic violator of certain rules and regulations that I put out in the operating room.

Q. What rules and regulations?

A. He was a chronic violator of the rule against talking on the telephone. He was spending about five minutes every day talking over the telephone.

Q. Will you kindly speak a little louder, Mr. Jorgensen?

You say that Mr. Palmer was a chronic violator of the rules.

Trial Examiner EICKHOFF. Just a minute! There is no use repeating these questions unless you are going to bring out something else.

By Mr. EDISES:

Q. Did you have any other rules or regulations in mind which Mr. Palmer had violated?

A. I did, yes.

Q. Did you mention them to Mr. Rodman?

1278 A. I did at the time, yes.

Q. What did you say?

A. I told him that he violated the rule against talking on the circuit, talking with other operators while working.

Q. What else did you say?

A. That is about all I can remember now.

Q. What did Mr. Rodman say?

A. Well, we were just discussing those men.

Q. Do you now recall anything that was said about Mr. Rone?

A. Rone—no, I don't. I don't think Rone's name was mentioned.

Q. Rone's name was not mentioned?

A. I cannot say, but I don't think so. I can't recall at this time.

Q. Do you recall anything that was said about Mr. Loudermilk?

A. No, I don't.

Q. How about Mr. Bash?

A. Bash—oh, yes, I do remember I mentioned Bash's name myself. I recall one incident when, about ten o'clock or 10:30 in the morning, that Bash had requested to get off for an hour or an hour and a half, and I told Bash that it was rather a poor time of the day to ask for anything like that; that he knew it was the busy time

1279 of the day. Bash told me, "Well, I am going to get off whether you give me permission or not."

I remember that particularly because it was the first time that anything like that had ever happened to me in the operating room.

Q. What day was it that you received this request from Mr. Bash?

A. I couldn't say. I can determine that from my record, because I did let him off finally.

Q. Was it a short time prior to the strike?

A. I can't say just when it was. I can find out, though. I think it was during September sometime.

Q. Did Mr. Bash indicate the reason why he wanted to leave?

A. No, he didn't.

Q. Did you finally give him permission to leave?

A. I did.

Q. What was said about Mr. York in this conversation?

A. I don't remember saying anything about Mr. York.

Q. How about Mr. Salisbury?

A. Salisbury didn't enter into the picture.

Q. He wasn't even mentioned?

A. No.

Q. Do you remember when these infractions that you have attributed to Mr. Palmer took place?

1280 A. It has been going on over a long period of time.

Q. And did you ever speak to Mr. Palmer about it?

A. I did.

Q. And what did he say to you?

A. One time I remember I had three operators talking to them about infractions of a certain rule, and before I got very far Mr. Palmer walked off and said, "Oh, hell."

Q. Do you remember any other occasions?

A. Yes. I had spoken to him about not reading while on duty, and not using the telephone indiscriminately.

Q. What class operator was Mr. Palmer?

A. Class "A."

Q. Did he receive the highest rate of pay?

A. He did.

Q. What is your opinion of him as an operator?

A. As an operator he is very good; that is, when it comes to straight receiving and sending of messages. However, there are other things to be taken into consideration; for instance, getting along with the men, particularly on the other end of the circuit so that everything goes smoothly, without any hitch.

Q. Do you remember any instances in which Mr. Palmer failed to get along with any other men?

A. Well, it is pretty hard to put your finger on that. There
1281 is such a thing known to operators as fighting on the circuit, which will tie up a circuit.

Q. Are you attributing some such incident to Mr. Palmer?

A. I am.

Q. And what particular incident have your in mind?

A. I can't give you any particular incident. That is a thing that is done over a long period of time.

Q. How long had Palmer been working for the company prior to the strike?

A. Since, I think, it was since 1931.

Q. So that he was working over four years prior to the strike; is that correct?

A. Yes.

Q. But you have never felt that any of these infractions of his were serious enough to discharge him previously, did you?

A. I had felt that at times, yes.

Q. Why didn't you discharge him?

A. Well, there may be several reasons for that. In the first place, I am always hesitant about discharging anybody. I have always felt, particularly during the depression, that it was a serious matter to put anybody out of work.

In the second place, of course, if a man is a good operator you will take more from a man like that than from a poor operator before you take drastic action.

Q. And Mr. Palmer, I take it, was a very good operator;
1282 is that correct?

A. He was a good operator in the respect that he was fast in sending and receiving messages.

Q. Do you know of any incident in which Mr. Palmer interfered with the efficiency of the other men in the office?

A. I will say that any time a man talks to another man while he is either sending or receiving, he is interfering with that man's efficiency.

Q. And do you recall now any instances in which you found Mr. Palmer doing that?

A. Yes. I can find many instances of that.

Q. Can you name any of them now?

Mr. MERRICK. Will you fix the time?

By Mr. EDISES:

Q. Can you cite the time and place?

A. I couldn't.

Mr. MERRICK. There could be only one place—in the H. B. operating room.

The WITNESS. The place is in the H. B. operating room, but I couldn't say any particular time. He was on duty there from 8 a. m. to 4 p. m.

Trial Examiner EICKHOFF. Aren't you, Mr. Edises, getting a little off the track and running down an alley?

Mr. EDISES. Possibly.

Trial Examiner EICKHOFF. As a matter of fact, you did not at any time discharge Mr. Palmer?

1283 The WITNESS. I did not; no sir.

By Mr. EDISES:

Q. Did you ever discipline Mr. Palmer at any time prior to the strike?

A. I have spoken to him several times.

Q. Was Mr. Palmer peculiar in this respect?

Trial Examiner EICKHOFF. Just a minute, Mr. Edises. Why go into this on your case unless you are anticipating the defense.

By Mr. EDISES:

Q. Now, after Mr. Hatch phoned you Monday night, did you get in touch, or did you or any other official get in touch with New York before you went about preparing the list of men who were not to be taken back?

A. No.

Q. Did you get in touch with New York after you had prepared the list, and before the meeting at the Bellevue?

A. No, sir.

Q. After Mr. Hatch phoned you, did you discuss with Mr. Rodman the question of what men should not be taken back to work?

A. No, sir. I left the office about five minutes after I hung up the phone.

Q. Did you discuss with Mr. Rodman, or any other official, the terms under which the men could return to work?

A. No, sir.

Q. Did Mr. Rodman at that time, namely, after Mr. Hatch's
1284 phone call, suggest to you or indicate in any way who he would be glad to see on the list?

A. All he said to me was, "Handle it your own way." After that I went in and got my list and telephone numbers and grabbed my hat and coat and went out.

Q. Did you have any prior instructions from New York during the strike, or previous to the strike, when it looked as though there was going to be one, as to what men should not be taken back to work?

A. Did I?

Q. Did you or any other official of the company have any?

A. I cannot speak for anybody but myself. I never had any.

Q. Neither instructions nor suggestions?

A. No, sir.

Q. Did New York ever indicate to you what the status or standing of the men who were not to be taken back was to be as to their discharge?

A. New York does not suggest anything to me. I get my order locally.

Q. Now, isn't it a fact, Mr. Jorgensen, that you told the men at the meeting at the Bellevue that you had nothing to do with the list, that it was strictly on orders from New York?

A. No; I didn't say anything like that.

1285 Q. What did you say?

A. I remember that I was pressed several times as to who made up the list, and I evaded the question. In other words, I didn't commit myself.

Q. Why didn't you answer?

A. Because of the fact that I didn't feel at that moment it was necessary for me to explain to the men who made up any list.

Q. Isn't it a fact——

A. (Interrupting.) It would take quite a long explanation to explain just how the list came about.

Q. And isn't it a fact, Mr. Jorgensen, that you didn't want it to appear that these men were finally and completely discharged?

A. I don't understand your question.

Q. Isn't it true that you stated, or led the men to believe at the meeting, that the refusal to reemploy the men on the list was more or less of a temporary nature?

A. There wasn't any refusal to reemploy the men on the list.

Mr. MERRICK. Even though he is allowed to cross examine him, Mr. Examiner, he ought to ask this witness what he did say before he starts putting these things in his mouth, phrasing them in such a way he is trying to catch him, the same as he did two or three.

1286 times before with other witnesses. I have no objection to his cross examining him if he asks what he said and then puts these other questions.

Trial Examiner EICKHOFF. If counsel will state a prior occasion and ask the witness whether he made such and such a statement on that occasion, I think that is proper.

Mr. MERRICK. You mean for a prior inconsistent statement?

Trial Examiner EICKHOFF. Yes. Did you at such and such a time say such and such a thing?

Mr. MERRICK. You mean referring to the original statement at the Belluvue Hotel, or what he subsequently told somebody?

Trial Examiner EICKHOFF. He must refer to something definite so the witness knows what he is talking about, what occasion.

Mr. EDISES. It is clear my last questions have been directed to the meeting at the Bellevue.

Mr. MERRICK. I have never had experience with this rule that you are using, but it seems to me it would be a lot more helpful in bringing out the facts if you ask him what he did say before you ask him what he didn't say, or isn't it a fact that he said something else.

Trial Examiner EICKHOFF. That is not necessary.

Mr. EDISES. Mr. Reporter, will you read back the last question and answer?

1287 (The last question and answer referred to were read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Will you explain that last answer?

Trial Examiner EICKHOFF. I don't think your question was very clear.

Mr. EDISES. I am asking him now a question in regard to the answer he made to my previous question. I will get back to that previous question after I have had his answer cleared up, if I may be permitted to do so.

Trial Examiner EICKHOFF. Your last question is not clear. You said, "led the men to believe." That might mean anything.

By Mr. EDISES:

Q. You understood what I meant?

A. Yes, and I said there was no refusal to reemploy anybody.

Q. Would you explain that statement?

A. Well, I cannot explain it; there wasn't any refusal.

Q. Well, what did you say at the meeting in regard to the men on the list?

A. When I was called upon to state the company's position, as far as and as close as I can remember, I said there would be absolutely no strings attached to anybody going back to work, but that I had a number of names of men who would have to submit applications for reemployment; that these applications for reemploy-

1288 ment would have to be approved by Mr. Stone in New York.

Q. Now, what was your reason for stating that?

A. The reason was, as I have already said, that I knew Mr. Rodman had told me that the men from New York, Chicago, and Los Angeles must be taken care of; and therefore, as I didn't know just how many men would eventually stay, but I knew at that time there were about eleven who were in doubt, I put eleven men down with the idea of making their status temporary until I actually found out how many men from these places wanted to stay and how many wanted to go back.

Q. You knew, Mr. Jorgensen, that quite a number of the men were not present at that meeting, didn't you?

A. Yes.

Q. And in particular you knew that the men on the list had not been gotten in touch with in regard to the meeting, didn't you?

A. Yes, I did; I knew that.

Trial Examiner EICKHOFF. Why did you check off these eleven names?

Mr. EDISES. Mr. Examiner, may I be permitted to ask one or two questions prior to that?

Trial Examiner EICKHOFF. I will withdraw the question.

By Mr. EDISES:

Q. Now, Mr. Jorgensen, when you selected the eleven names
1289 to go into the list did the question of pay enter into it?

A. No, sir. I was merely trying to get eleven men who were least satisfactory to the company in some way or another.

Q. Did you consult the error records of these particular eleven men prior to preparing the list?

A. I didn't have any time to consult it. The men on that list were made up hurriedly. And I wish to state now, if I had had more time than I did have, some of the men on the list now might not have been there, and some that were not there, might have been there. I had very little time to prepare that list.

Q. What men are you referring to who might have been on the list?

A. I am not referring to anybody. I merely want to make it clear that I had so little time; that, supposing I had had a few hours to do it in, I would have taken considerable more pains, and some men might not have been there, and some might have been that are not.

Q. Did you have the error records of these men in mind at the time that you prepared the list?

A. Some of them, yes.

Q. Did you let any personal feeling on your part enter into the preparation of the list?

A. No; I have never done so.

Q. Likewise, as to political beliefs?

A. I have never had any feeling in that respect in
1290 connection with the men.

Q. You didn't have the same reason for each of the men being on the list?

A. No; I didn't.

Q. I am going to ask you, Mr. Jorgensen, to tell me the reasons which were in your mind for putting each of the various men on the list. First let us take Mr. York. Why did you put Mr. York's name on the list?

A. When I looked at Mr. York's name I recollected that he had given indications of not being well suited for a supervisor's job. I had had two different complaints from New York as to the way in which he handled his job; and also during the strike he had spoken to me about officials of the company, and the company itself, in such a way that I really doubted his loyalty to the company, and whether he could be a successful supervisor if he felt that way toward the company itself.

Q. Do you recall in particular what he said about the company officials?

A. I do.

Q. What was it?

A. I wouldn't like to mention it in open court.

Q. I take it that he expressed himself rather strongly against certain officials?

A. He did.

1291 Q. Did he specify what acts or actions of those officials he objected to?

A. No, he didn't.

Q. Is this your belief——

Trial Examiner EICKHOFF. You are getting down another alley now. Let's stay right on the course here.

Mr. EDISES. Very well.

By Mr. EDISES:

Q. It was pretty clear, was it not, that Mr. York was strongly sympathetic with the purposes of the strike?

A. Inferentially he might have been. The strike didn't come up—when he spoke to me the strike wasn't mentioned.

Q. You yourself are convinced that he was strongly in favor of the strike?

Mr. MERRICK. I submit it is purely argumentative.

Trial Examiner EICKHOFF. I think so.

Mr. MERRICK. I object to it.

By Mr. EDISES:

Q. You knew that Mr. York was an active union man, didn't you?

A. I did not.

Mr. MERRICK. I object. It is the same thing.

Trial Examiner EICKHOFF. I wouldn't have any objection to the question, but it has been answered.

The WITNESS. I didn't know Sam York was a union member.

By Mr. EDISES:

1292 Q. Did you have the feeling that it wasn't quite as advisable for supervisors to take strike action as it was for the men to take strike action?

A. I never felt a supervisor should take strike action.

Q. You have felt a supervisor had a position with the company which would indicate that he ought not to strike in the event that others did?

A. I always felt a supervisor was sort of an intermediary between the operators and the company officials, and at the time the ARTA was formed I was a supervisor myself and at that time I formed that opinion and it has remained with me since.

Q. And you refused to join ARTA because of the fact you were a supervisor?

A. I have never been asked to join.

Q. But you yourself failed to join ARTA because you felt a supervisor ought not to have anything to do with the union, is that right?

A. You might say that. I was never approached, so I didn't make a move to join.

Q. You knew that Mr. York had gone on strike, of course?

A. Yes.

Q. What was your reason for putting Mr. Patterson on the list?

A. Mr. Patterson's error record entered into that picture. I had in mind several bad errors that he made in a particular file
1293 that we were trying very hard to preserve, which we were handling for the Commercial Pacific Company, and an error of that kind is regarded as a bad error, and Mr. Patterson had several of them.

Q. What class operator was Mr. Patterson?

A. Class "B."

Q. Is Mr. Patterson now back at work for the company?

A. He is.

Q. Now, how about Mr. Humphreys?

A. Mr. Humphreys was a very poor tape operator. He was a good manual operator, but he had never made a very good tape man.

Q. And are those all of your reasons for putting him on the list?

A. Yes.

Q. What class operator was Mr. Humphreys?

A. Class "B."

Q. Is Mr. Humphreys now back at work?

A. Yes.

Q. What was your reason for putting Hardin on the list?

A. Hardin? Hardin was a temporary student operator who made very little promise. He had already once before been a student, and he had been demoted to a R. Q. clerk and given another chance. But he gave many indications that he never would make an operator, and he made very serious errors because of that.

1294 Q. Did Hardin come back to work on the Monday of October 8th?

A. He did not.

Q. He did not?

A. No.

Q. When did he?

A. He came back to see me the next morning, and he resigned and gave me a written resignation.

Q. You never refused to take him back, did you?

A. No, I did not.

Mr. EDISES. Did you get the answer, Mr. Reporter?

The REPORTER. Sure!

A. (Continuing.) As a matter of fact, I gave him the opportunity to resign. I told him that I had in mind a long time that his work had been very unsatisfactory, and had a long talk with him and particularly he asked me if anybody should ask for his reference that I would give him a good reference. I told him that I realized that he was a young man and that he ought to have a chance in life, and that I wouldn't put anything in his way.

By Mr. EDISES:

Q. He was even beneath the various classes of operators, was he not, as a student operator?

A. He was class "E."

Q. How about Mr. Dwyer?

A. Mr. Dwyer—I had many complaints from the night
1295 supervisor. He was always late for work. He had many admonitions and didn't seem to heed them.

Q. What class operator was he?

A. He was a clerk on the night trick.

Q. Has he been taken back to work?

A. Yes.

Q. How about Mr. Westcott?

A. Mr. Westcott had many times failed to show up for work and he admitted that he had been drinking. That was about the only reason I had. I don't like men to fail to show up for work on account of drinking. I gave him a very strict admonition about two or three months ago, and since then he has seemed to have gotten a little better.

Q. You have taken him back to work?

A. Yes.

Trial Examiner EICKHOFF. We will take a recess for five minutes.

(At this point a recess was taken, after which proceedings were resumed as follows:)

By Mr. EDISES:

Q. Did you ever see this paper before?

A. [Witness examining paper.] Yes; I did.

Q. What is it?

A. It is a company seniority list of H. B. operators.

Q. What is its purpose?

A. It is a list that is posted on the bulletin board for
1296 the information of the men.

Q. What is the purpose of the list?

A. Merely to let the men know their relative seniority with the company.

Q. What are the seniority rules of the company with reference to promotions, and so forth?

A. With reference to promotions, it is considered in any promotion.

Q. Is it considered in the case of men being laid off?

A. If a man has been with the company a considerable number of years, yes; it would be considered.

Q. In other words, if there were several men, each of approximately equal ability and efficiency, the question of who was to be laid off, if one had to be, would be determined by reference to seniority, is that correct?

A. Either company seniority or office seniority; yes.

Q. Was a seniority system in force at the time of the strike?

A. In force?

Q. In effect.

A. Yes.

Q. Does this list refer to company seniority or office seniority?

A. Company seniority.

1297 Q. Did you likewise post a list indicating office superiority?

A. Office seniority?

Q. Yes; office seniority.

A. Yes.

Mr. EDISES. Do you have such a list, Mr. Merrick?

Mr. MERRICK. No.

Mr. EDISES. Would it be possible to get the current——

Mr. MERRICK. (Interrupting.) Ask the witness, I don't know.

By Mr. EDISES:

Q. Do you have a current list setting forth the office seniority of the men?

A. Yes.

Q. And was such a list in effect on October 4, 1935?

A. Yes; it was.

Q. Can you produce the list which was then in effect?

A. I will look in my files. I don't know whether I have a copy of it. I probably have, and if so I will bring it.

Mr. EDISES. May the witness be instructed to bring that tomorrow morning or this afternoon?

Mr. MERRICK. I have no objection. I haven't seen it. Is it really material here?

Trial Examiner EICKHOFF. That will come up at the time it is offered.

Mr. EDISES. May we have the witness instructed to produce that list?

1298 Trial Examiner EICKHOFF. He has volunteered to produce it.

Mr. EDISES. Will you produce it this afternoon?

The WITNESS. I will, if I can find it in my files.

Mr. EDISES. Thank you.

Trial Examiner EICKHOFF. Are you through with this paper? (Indicating company seniority list.)

Mr. EDISES. For the time being.

Trial Examiner EICKHOFF. You are not offering it at this time?

Mr. EDISES. Not at this time.

Mr. MERRICK. Then I suggest that your description of the document be enlarged upon by noting the date in the record. I believe it is the seniority list of May 1, 1935.

Mr. EDISES. I will offer it for identification. It is headed, "Company seniority operators, H. B., San Francisco, California, May 1, 1935."

Trial Examiner EICKHOFF. It may be marked for identification as Board's Exhibit No. 15.

(The company seniority list referred to was marked "Board's Exhibit No. 15 for Identification, Witness Jorgensen.")

By Mr. EDISES:

Q. Have you anything to add to your statement in regard to Mr. Palmer, as an explanation of why you put him on the list?

1299 A. Mr. Palmer, as I remember, was in the habit of reading on the circuit. He had several admonitions to that effect. I have known Palmer for a long time. He was—when I was supervisor I remember I was about to recommend that he be discharged at that time on the midnight trick. I had considerable trouble with him on that.

Q. Did you make any such recommendation?

A. No; I didn't. I spoke to Palmer and he promised to improve in that particular respect.

Q. What was Palmer's place or standing on the H. B. office seniority list at the time of the strike?

A. I couldn't say without looking at the list.

Q. Why did you put Mr. Bash on the list?

A. Mr. Bash for some time had given indications of being preoccupied with some other work.

Q. What other work?

A. I don't know. I know that he seemed to be pre-occupied with some other work that didn't permit his giving his full attention to his work.

Q. What was the evidence that led you to believe that?

A. The evidence that I had in particular was the day that he asked me to get off and he told me that he was going to get off any-

way, whether with or without my permission. I knew there must be something he was interested in outside or he wouldn't make
1300 such a statement. I took particular notice of that because, as I said before, I never heard of anybody doing that before, because I was always very liberal about letting men off.

Q. Is that the whole of your reasons?

A. No; it isn't the whole of my reasons.

Q. What other reasons did you have?

A. Well, when he was on duty he would be inattentive in a way. He would be sitting working cross-word puzzles on the circuit, which is not conducive to efficient operation. He would talk to operators and thereby impair their efficiency.

Q. Did you ever reprimand Mr. Bash for any of these actions?

A. I did.

Q. When?

A. I can't say. I remember I called his attention to the fact that the working of cross-word puzzles was probably more serious than the reading of papers on the circuits.

Trial Examiner EICKHOFF. What office was he in?

Mr. EDISES. The H. B.

By Mr. EDISES:

Q. Have you now stated the whole of your reasons for putting Mr. Bash on the list?

A. At that time; yes. As I said before, I didn't have very much time to go through the list very carefully.

Q. Those were your reasons at the time?

A. Those were the reasons; yes.

1301 Q. Was Mr. Bash a class "A" operator?

A. Yes.

Q. What was his standing on the H. B. office seniority list?

A. As far as I remember, he was quite high on the seniority list.

Q. How about Mr. Rone?

A. Well, Mr. Rone had violated certain rules, too, in regard to leaving the circuit without permission, and speaking to other men.

Q. When was this?

A. I can't give definite dates. Those are the things we note from day to day. I was in close contact with the men, in and out.

Q. Did you ever reprimand Mr. Rone?

A. Yes. I didn't reprimand Mr. Rone personally in that particular respect, I don't believe; but I had to call attention to that through, I believe, two different bulletins to the men.

Q. But you never reprimanded Rone personally?

A. I don't remember having done that; no.

Q. You think his infractions were not of a very serious nature?

A. They were of a serious nature; yes. I consider if a man impairs the efficiency of any of his co-workers that it is a serious breach of the company rules.

1302 Q. But not serious enough to call his attention to it personally, is that correct?

A. I don't have to. I have a system of issuing bulletins and instructions for everybody to read.

Q. Did you state whether or not he was a class "A" operator?

A. No; but he was.

Q. He was?

A. Yes.

Q. How about Mr. Loudermilk?

A. Mr. Loudermilk; I would say just about the same thing about him as I did about Mr. Rone. However, in connection with Rone, Palmer, and Loudermilk, at the time I had in mind several complaints that I had received from supervisors of the transcontinental circuit. I had several complaints that these three men were not amenable to discipline. The New York circuit, the efficiency of the New York circuit seemed to be impaired because they did not seem to want to take orders. It was more or less trouble on that circuit all the time.

As I said before, once I had three men up to my desk and I explained to them that whenever orders were issued they were supposed to be obeyed.

Q. Who were those three men?

A. Those men were Palmer, Rone, and Burtz.

Q. When was the occasion of this conversation?

A. I would say about three or four or five months ago.

1303 Q. Now, is there any other reason for Rone being on the list?

A. No; I couldn't say there was any other.

Q. Would you state approximately the number of times that you were required to complain of Rone's actions?

A. Complain of them?

Q. Yes.

A. To him, you mean?

Q. Yes.

A. I don't recollect any particular time that I reprimanded him.

Q. Did you ever reprimand Mr. Rone?

A. I don't remember having done so.

Q. How about—have you stated all of the reasons in connection with your placing Mr. Loudermilk's name on the list?

A. Yes.

Q. Was he a class "A" operator?

A. Yes.

Q. What was his standing on the company seniority, the H. B. office seniority list?

A. He went to work about 1932 or 1933. I would have to see the list.

Mr. MERRICK. I object to that. He was asked to produce the list.

1304 Trial Examiner EICKHOFF. That would probably be better—wait until the list is produced.

By Mr. EDISES:

Q. How about Mr. Salisbury?

A. Mr. Salisbury—it was my own personal conviction that Mr. Salisbury had violated the leave of absence.

Q. What do you mean by that?

A. I had recommended his leave of absence to my superior, and the reason given for his leave of absence was that he was to do welfare work for the M. R. T.

Q. What is that?

A. Mackay Radio Telegraph Company. And I knew, of course, that he had been conferring with RCA officials, and that he was not working solely for the welfare of the Mackay Radio, which his leave of absence stated.

Q. What was the nature of this welfare work supposed to be?

A. Well, I don't know just exactly what it was supposed to be. He was supposed to go back to New York and carry on certain negotiations, I understand.

Q. What kind of negotiations?

A. With the company.

Q. On behalf of whom?

A. On behalf of the Mackay Radio employes.

Q. You mean on behalf of the ARTA, don't you?

A. No, I don't mean that. I mean on behalf of the Mackay Radio employes; at least that is what his leave of absence, 1305 the reason stated on his leave of absence said.

Q. Well, Mr. Jorgensen, didn't you know at that time ARTA was negotiating with the Mackay Radio and Telegraph Company in an effort to get a signed agreement regarding wages, hours, and working conditions?

A. Yes, I knew that.

Q. And didn't Mr. Salisbury say anything about the union?

A. No.

Q. Wasn't it a fact that the union had delegated him to go to New York to carry on those negotiations?

A. No. His only reason, the only reason on his leave of absence said to go to do welfare work for the employes. I think that was just about what was said.

Q. You, in fact, knew he was going to New York in connection with those negotiations, didn't you?

A. Yes.

Q. And you knew that those negotiations were between ARTA and the company, didn't you?

A. Yes.

Q. Have you anything further to add to your statement as to why you put Mr. Salisbury on the list?

A. No, that was the only thing that went through my mind.

Q. Do you remember having a conversation with Mr. Loudermilk at the Bellevue Hotel?

A. Yes.

1306 Q. And you were off in a room by yourselves, were you not?
A. Yes, at his request.
Q. Do you remember what was said in that conversation?
A. I remember just about what it was. I cannot say it word for word.
Q. As closely as you can recall, what was it?
A. Mr. Loudermilk requested to see me personally and without anybody else being present. I told him I had no objection so we went into one of the rooms and shut the door. Mr. Loudermilk informed me that he had heard that certain employes of the H. B. operating room would not be permitted to return to work if the men voted, that were there for that purpose, to go back.
And I told him it was not so.
Q. What else did you say?
A. Merely that there were certain men that would have to submit their applications for reemployment and that their applications would have to be approved by Mr. Stone.
Mr. Loudermilk then said, "That means the same thing as if they are out."
Q. What did you say?
A. I said, "Absolutely not. It merely means that applications must be passed on by Mr. Stone."
The same thing happened, as I remember, when I read off the list later on. Mr. Loudermilk advanced the same sentiment, and I denied it in front of everybody.
1307 Q. And have you stated the whole of this conversation with Mr. Loudermilk?
A. That was the most of it.
Q. Was there any mention of ARTA?
A. No; there was no mention of ARTA.
Q. You are sure of that?
A. I am sure of that.
Q. Don't you remember Mr. Loudermilk asking you why this was a private meeting at the hotel, and why it wasn't being held at the ARTA headquarters?
A. No; I don't remember that.
Q. It is possible that he might have said that?
A. Might have; yes.
Q. Is your recollection stimulated now?
A. No.
Q. Do you remember Mr. Loudermilk stating to you, "Well I guess I am one of those that are not going to be taken back, am I not?" and you stated, "Yes, you are right."
A. No; I didn't say anything like that. He asked me if he was on the list and I said, "Yes."
Q. Do you remember his stating, "Well, I suppose I am on the list, of course?" or words to that effect?
A. I think that was the way he put it.

Q. And what did you understand him to mean by putting it that way?

1308 A. I don't know what he meant, but I told him he was on the list. I remember that.

Q. Well, Mr. Jorgensen, you knew that he was referring to his union activities, didn't you?

A. I don't remember what I thought at the time. I can't say that, or anything, went through my head. I don't see why anything should. He said, "I suppose I am on the list," and I said "Yes."

Q. In other words, it was evident that he took it for granted that he would be on the list.

A. It didn't make much of an impression. I remember him asking if he was on the list and I said, "Yes." Then he said, "I suppose that means that I am out?" and I said, "No."

The same thing happened in the meeting afterwards, as far as I remember.

Q. Don't you remember Mr. Loudermilk getting rather hot under the collar, and stating that the company was trying to make the men sell out their own brothers?

A. I don't remember it just that way. I remember Mr. Loudermilk said "Well, I will bet that the men that are here will not vote to go back, with a list of that kind," something to that effect.

I said, "Well, I won't argue. The vote will show that," or something like that.

Q. Now, Mr. Jorgensen, don't you remember stating to Mr.

1309 Loudermilk that you were just acting on orders; that some of the men on the list, you considered among the best men in your employ, and you would rather have them back than others, but you had your orders, and there was nothing you could do about it?

A. No; I don't remember saying anything like that. I remember, I don't know whether it was at this particular time or later during the meeting when I was asked about who made up the list, that is the time I evaded the question for the reason I have stated previously. And at that time I said that somebody may have put some names on and somebody else may have put some other names on. In other words, at that time I didn't feel that I wanted to tell the men that I was responsible for the list. It would take too much explanation.

Q. And didn't you at that time state that some of the names on the list were among the best men in your employ, and that if you had anything to say about it you would take them back?

A. I don't remember saying that. I may have said something like that: I don't know.

Q. It is possible that you may have?

A. The list was sort of a temporary affair anyway, because I didn't know who actually wanted to stay here, and maybe all of the eleven men would come back, as far as I was concerned. In other

1310 words, if all the men from New York, Chicago, and Los Angeles had gone back, everybody would have been taken back, as

far as I was concerned. There wouldn't have been the necessity of picking any one man.

Q. Now, Mr. Loudermilk testified on this witness stand that during that conversation he had with you at the Bellevue you stated "This union," meaning ARTA, "has got to be broken up." Did you make any such statement?

A. Absolutely not. I never said such a thing. I wouldn't say such a thing.

Q. Now, you didn't tell Mr. Loudermilk during that conversation, or at any other time during the evening, that he could go back to work that morning, did you?

A. No. I thought my statement was perfectly clear when I said—after the vote was taken I said, I remember saying it twice, first in one room and then in the other, "All right, let's all go back to H. B."

Q. You made it perfectly clear he was not to go back to work?

A. If Mr. Loudermilk has that impression, he misunderstood me because there were several men at the meeting who were on the list who went down with us and were put to work immediately. If Mr. Loudermilk had come he would have been put to work immediately.

Q. Well, you knew it to be true that there were quite a number of men who hadn't even been gotten in touch with in regard to the meeting?

1311 A. I knew that because there were only 36 there.

Q. Consequently, a number of those men couldn't possibly have gotten down to work that morning, isn't that correct? They didn't know about it?

A. They wouldn't have to; they could have come in during the day and they would have been taken back, which a number of men did. They came after they heard the strike was over; they trickled in all during the forenoon and they were put to work immediately.

Q. Now I suppose some didn't hear about it until the following day, is that correct?

A. I don't know; I know who showed up and they were put to work immediately.

Trial Examiner EICKHOFF. Did Mr. Hatch tell you he was making no particular effort to notify the men whose names you checked off?

The WITNESS. Yes, he told me that. I didn't have anything to do with the meeting. I didn't want to have anything to do with the meeting. I wanted to be there to state the company conditions. He had called the meeting. I didn't want to suggest anything.

By Mr. EDISES:

Q. You didn't have anything to do with the meeting? You went to Mr. Hatch's house in response to his request?

A. I did.

1312 Q. You knew a meeting was going to be held, didn't you?

A. Well, when he called me on the phone he told me the general idea and told me he would explain it in more detail when

I came out to the house; and he told me that he was convinced that a certain number of men, a large majority of the men, probably were in favor of returning if they could get a vote on the subject whether to go back to work or whether to stay out.

Q. Of course, you understood that ARTA was out of it?

A. I understood that perfectly.

Trial Examiner EICKHOFF. If these men could have gone back to work, what was the purpose of the list?

The WITNESS. Which men?

Trial Examiner EICKHOFF. Men like Loudermilk and others, who were on it?

The WITNESS. I stated that at the meeting. I said that these men would have to submit their applications for reemployment and they would have to be approved by Mr. Stone. The idea was, I didn't know how many of the other men wanted to stay. If none of them had stayed they would all have been put back to work. In other words, these men's status would be temporary until we found out how many men wanted to stay here.

Trial Examiner EICKHOFF. But still you didn't even want—Withdraw that.

1313 By Mr. EDISES:

Q. Of course, you understood that ARTA was out of the picture as far as the meeting was concerned?

A. I understood that, yes.

Q. When you got to Mr. Hatch's home you discussed with him the question of where the meeting should be held, did you not?

A. I didn't discuss it. It came up after all these men's phone numbers had been put behind their names; the question then came up as to where they should meet, and Mr. Hatch suggested the Bellevue Hotel.

Q. And you said that was agreeable to you?

A. I didn't care where they met, as a matter of fact.

Examination by Trial Examiner EICKHOFF:

Q. Did Mr. Hatch characterize that list in your presence?

A. No, he didn't. I guess it was not the time to argue. He wanted me there to state the company's terms, and I did.

Q. When you first checked off these names in his presence, or showed him the list, did he remark about it?

A. No. I had my list there, a complement list, with all the supervisors, operators, and electricians on one sheet; all operators on another sheet; and the clerks on a third. I merely went through the sheets and checked off those names.

By Mr. EDISES:

Q. In Mr. Hatch's presence?

A. Yes.

1314 By Trial Examiner EICKHOFF:

Q. Did he make any comment at that time?

A. No. He asked me to state the company's proposition and I did.

Q. Did you tell him the men's names you checked off could go to work immediately on a temporary basis?

A. No.

Q. What did you tell him?

A. I told him I would make my statement at the meeting about those men.

Q. You don't know how he happened to decide he needn't go out of his way to notify those particular men?

A. No, I don't. He probably felt it was rather embarrassing for them to have them there. He told be he wasn't going to make particular effort to get them, and I didn't make any comment on it because I rather understood his position.

Q. Did you explain to him anything in connection with the names that you had checked off?

A. Well, I just merely told him these men would have to submit applications for re-employment.

Q. But you didn't tell him that they could go back to work immediately on a temporary basis?

A. No.

Q. Didn't all the men have to submit applications for re-
1315 employment?

A. Well, it wasn't thought of, but during the meeting there it occurred to me that if all the men had left, or gone on strike and really had left the employment of the company, then, so far as the company was concerned, if they should come back immediately, they should make some formal application for re-employment. It should apply to all the men. And I talked that over with Captain Dodd informally that day and he decided that all the men should apply for re-employment; so that applications were made out later in the day for all the men and they were given to the men the next day.

Q. At that time you had no objection to the men on this special list returning to work immediately on a temporary basis?

A. No, sir.

Q. You offered them that—you intended to offer them that?

A. I intended to offer them that, you say?

Q. Yes.

A. No, I hadn't thought it out that way. When I read off the list in the meeting I told them that these men would have to submit applications for re-employment; and after the vote came off I said, as I previously stated, "Let's all go back to H. B." My intention was that whoever came back to work would be put to work, and they were.

Q. If the matter was in your hands, what was the purpose
1316 of the applications?

A. The matter was not in my hands anyway, because I had to take care of these men from the east and from Los Angeles, but I didn't at that time know how many were going to stay.

Q. How did you happen to single this group out?

A. Because I had to have eleven men at that time. I knew there might be eleven men that might want to stay, so I had to have eleven men that I would sort of have to put on a temporary basis, or do something. There were eleven men that I had to provide jobs for, either from Los Angeles or from New York or Chicago. If all these men from there that had come in had gone back——

Q. (Interrupting.) I understand——

A. (Continuing.) Nobody would have been out.

By Mr. EDISES:

Q. Isn't it a fact that you told the meeting that New York would have to pass on the applications of these eleven men before they could come back to work?

A. I said Mr. Stone, I believe.

Q. That Mr. Stone would have to pass on the applications of these eleven men before they could go back to work, isn't that correct?

A. I don't know that I put it that way.

Q. Just how did you put it?

A. That the applications for re-employment of these men
1317 would have to be passed on by Mr. Stone. That is all I said, so far as I remember.

Q. But didn't you say at that time, with reference to these eleven men, that they could, nevertheless, come back to work temporarily?

A. No, I didn't say that. But I didn't say it would have to be passed on by Mr. Stone before they returned to work; I intended anybody that was at the meeting there, or came in later, that they could go back to work.

Q. I take it, then, that the only statement that you made, which could be construed as an invitation to the eleven men, that they too might come back to work, was your closing statement, "Well, let's all go back to work," is that correct?

A. No.

Mr. MERRICK. I object to that. It is argumentative.

Trial Examiner EICKHOFF. Mr. Reporter, read the question.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. MERRICK. "Which could have been"——

Trial Examiner EICKHOFF. Objection sustained.

By Mr. EDISES:

Q. Did you make any other statement in regard to the eleven men on the list going back to work, other than your concluding statement, that all of the men should come down to the office and go to work?

The WITNESS. Please read the question.

1318 (The question referred to was read aloud by the reporter as above recorded.)

A. No.

By Mr. EDISES:

Q. That was your only statement with reference to the eleven men on the list going back to work?

A. Well, I hadn't singled them out, except in my saying they would have to submit their applications for re-employment, and when I went out I said "Let's all go back to work." I said it twice and I don't see how it could be misunderstood.

Q. But before you made that concluding statement you didn't say anything about these eleven men on the list being permitted to come back to work that morning, did you?

A. No. I thought that was generally understood. Some of the men on the list went back and were put to work.

Examination by Trial Examiner EICKHOFF:

Q. Mr. Jorgensen, if these men could have gone—the men on the list—right back to work, subject to filing an application, and if the matter was entirely in your hands, what was the purpose of the application?

A. Well, I thought I had explained that—because I didn't know that their status would be permanent.

Q. Wouldn't the same thing apply to the rest of the men?

A. No; I had to single out somebody. In case that the eleven men from outside had stayed I had to single out eleven men that
1319 couldn't come back to work; but so far I didn't know how many of the others were going to stay. That is why I wanted it understood that it was only, that they would have to be approved by Mr. Stone, as Mr. Stone was the one that originally said that the men from the outside must be taken care of.

Q. Then it wasn't a case of first come first served, was it?

A. First come, first served—no. The eleven men naturally had a little different position.

Q. In other words, if any were to be dropped or any choosing was to be done, these men would have been dropped, or would have had less favorable treatment than the others?

A. They would either have had to be dropped or, as I said, if the eleven men had stayed all these eleven men would have been dropped; if all the eleven men had gone away, all these eleven men would have been, that is, would have come back and would have been made permanent again.

By Mr. EDISES:

Q. Mr. Jorgensen, do you remember stating at any time prior to or during the meeting at the Bellevue, that although there were eleven names on the list, that five of them couldn't be taken back under any circumstances?

A. No, I don't remember making that statement.

Q. Suppose that you might have made such a statement?

A. I don't see why I should, no.

Q. Isn't it a fact, Mr. Jorgensen, that the vote which was
1320 taken by the men was on the proposition of going back to work without the eleven men on the list?

A. No, not that I understand it.

Q. Didn't the discussion of the men at the meeting indicate that that was the way they understood it?

A. I didn't hear much of the discussion. I was in the other room. I didn't hear any of the deliberations during the meeting.

Trial Examiner EICKHOFF. Do you know whether Mr. Loudermilk or anybody else protested to the assembled gathering against their going back to work and leaving these eleven out?

The WITNESS. No.

Trial Examiner EICKHOFF. Or any number out?

The WITNESS. I didn't hear any of that. I was in the bedroom at that time.

By Mr. EDISES:

Q. So I take it that the respective times that the men showed up the following day was not the sole deciding factor?

Mr. MERRICK. I object. It is argumentative.

Mr. EDISES. Am I confined to asking questions in the same way that I would be compelled to ask them on direct?

Mr. MERRICK. You haven't been in much trouble. Rephrase that.

Mr. EDISES. Surely

1321 By Mr. EDISES:

Q. The fact that the—Strike that—What part did the time that the men showed up at the H. B. office have to do with the question of whether or not they were put back to work?

A. They were all put back just as soon as they came in, until we had our required number of operators there. I shouldn't say "operators"; I should say employees.

Q. Were there any exceptions to that?

A. No, no exceptions.

Q. None at all? In other words, if these men on the list had showed up that morning they would have been put back to work, is that correct?

A. Yes, just like the rest of them.

Q. Except that they would have been the first to be laid off when the eastern men arrived, is that true?

Mr. MERRICK. That is an unfair question. The eastern men had arrived. He isn't addressing his question to the facts in evidence, or any other fact.

By Mr. EDISES:

Q. Except that as soon as it was necessary to lay off a man, the men on the list would have been the first to be laid off, is that correct?

A. I don't understand that question.

Q. Well, my question is simply this:

Trial Examiner EICKHOFF. What counsel can't understand and what I can't understand, is why the list and why the applica-
1322 tions, if they could all have gone back to work and been put to work.

The WITNESS. Well, I don't know how to explain it. It seems to me I have explained that situation. I had to take care of these eleven men as far as I knew at that time. I might not have had to take care of that many because they might not all want to stay, but I had to protect myself in some way so I wouldn't have eleven men too many. Therefore, I put it that way; that these men, insofar as instructions had come from New York to take care of these men, that is the way I put it; that the men's applications must be approved by Mr. Stone. If all the men had gone back right away where they came from, there wouldn't have been any question that all of the men would have been there.

Mr. MERRICK. If you will permit a suggestion, ask him what would have happened if less than eleven men had stayed and all of these men had come back at the same time. That is the time when the list became a part of it.

Mr. EDISES. That is a hypothetical question which shouldn't arise in this case.

Mr. MERRICK. True, but that is why the list didn't become important.

By Mr. EDISES:

Q. Why did you permit any of the eleven men to come back to work when you had orders from Mr. Stone to the effect that
1323 the eleven men would have to be taken care of?

A. Because I didn't know how many men wanted to stay. There was no use keeping the men out so long as I didn't know. I would have to ascertain that first. In other words, if the men on the list had come back at six o'clock I would have put them to work on a temporary basis in accordance with what I had said at the hotel. It would have depended on the instructions from Mr. Stone whether they would be kept on or not. At that time I didn't have time to explain just why the list was made.

Q. Then it is a fact, isn't it, that the men on the list were to get the bounce even if they did come back, as soon as the presence of these strike breakers made it necessary?

A. If the eleven men had stayed here, all the eleven men would have been out; yes.

Q. Now, Mr. Jorgensen, isn't it true that you have told the five discharged men, Salisbury, Rone, Loudermilk, Bash, and Palmer——

Mr. MERRICK. (Interrupting.) I object to that characterization. There is no evidence to support that.

Mr. EDISES. Have you read the Act? Do you know that strikers are considered still employees?

Trial Examiner EICKHOFF. What is the question?

(The unfinished question referred to was read aloud by the reporter as above recorded.)

1324 By Mr. EDISES:

Q. —at various times——

Trial Examiner EICKHOFF. I think the question is objectionable.

Mr. EDISES. I submit, Mr. Examiner, that according to the National Labor Relations Act, a man on strike is still an employee.

Mr. MERRICK. That may be true for certain purposes, but not here.

Trial Examiner EICKHOFF. Isn't it one of the conclusions that we are to reach in this case?

Mr. EDISES. I am perfectly willing to characterize them otherwise.

Trial Examiner EICKHOFF. Strike out the word "discharged."

By Mr. EDISES:

Q. Isn't it a fact that you had told the five men I just mentioned at various times, that they were among your best operators?

A. Maybe so.

Q. It is so, isn't it?

A. I don't know. I don't go around and tell the men whether they are my best operators or not. I have my own opinion.

Q. It is a fact, isn't it, that they were among your best operators?

A. Some of them.

Q. Which ones, specifically?

1325 A. I would say they are all good operators, but of the four, Bash, but of the five, Bash is not so good.

Q. And the rest are among your best operators, isn't that true?

A. They are among the best operators when you refer to sending and receiving of messages; yes.

Trial Examiner EICKHOFF. We will recess until 2 o'clock.

(Thereupon at 12 o'clock noon a recess was taken until 2 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2:45 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner EICKHOFF. Will you take the stand again, Mr. Jorgensen?

ANDREW JORGENSEN, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Direct examination by Mr. EDISES:

Q. Mr. Jorgensen, have you the office seniority list?

A. Yes, I have.

(Thereupon, the witness handed Counsel Edises the office seniority list.)

Q. Is this the list which was in effect on August 4, 1935?

A. Yes. There may be some men on there not working; I haven't looked.

1326 Q. Will you state just what use was made of this list?

A. It was posted on the bulletin board, like the company seniority list, for the information of the operators.

Q. And what reference was made to the list in connection with the advancement or demotion of the operators listed thereon?

A. Well, it went according to the bidding system. An operator, in order to get a Class A position, would have to be a Class B man in order to bid on a Class A job. And it went so on down the line. A Class C man was the only man that could bid on a Class B job. In other words, a Class C man can't jump from Class C to Class A, according to the rules.

Q. Was the list used in determining which man was to get a more favorable spot or trick, in the event that one became available?

A. This list here?

Q. Yes.

A. I don't quite get your question, what you mean.

Q. I take it that certain tricks were less desirable than others.

A. Yes.

Mr. MERRICK. I can't see the relevancy or materiality of that testimony. Will you ask the attorney for the Board to state what he has in mind?

1327 Trial Examiner EICKHOFF. I think this witness was accused of discrimination in this regard, earlier in the case.

Mr. MERRICK. That has nothing to do with the issues in the case. I don't think he was accused of discrimination. As a matter of fact, it appears that he became chief operator because the prior man discriminated.

Trial Examiner EICKHOFF. I don't see the bearing.

Mr. EDISES. I am desirous of determining to what extent this rule of seniority was followed in determining questions such as the promotion, demotion, or discharge of operators, other things being equal. If Mr. Jorgensen can make a statement——

Trial Examiner ECKHOFF. What about the tricks? What has that to do with the case?

Mr. EDISES. I have tried to bring out the significance of that list by framing a general question without any result that, to me, was satisfactory or indicated a complete answer. In view of that fact I am compelled to ask specific questions in regard to the use and bearing of this list on such questions.

Trial Examiner EICKHOFF. Where does the question of tricks come into the case?

Mr. EDISES. I am willing to confine my question to the bear-

1328 ing of the list upon discharges, if Mr. Jorgensen will tell the court just what use was made of that list in the event that it was necessary to decide on the discharge of one or certain men of otherwise equal abilities.

Mr. MERRICK. I think he should make it clear whether that is a hypothetical question or whether one addressed to a factual situation. He said what use was made in the event of something that might have happened.

Examination by Trial Examiner EICKHOFF:

Q. What was the rule or practice in that regard in force in the H. B. office?

A. I wouldn't consult this list in case of discharge.

Q. Suppose you were letting a man out because you were over-manned.

A. If I were over-manned?

Q. Yes.

A. Well, I would generally take the man youngest in the service, if he also was the poorest operator. I would first look for the poorest operator and then I would look for seniority. I wouldn't necessarily discharge a man with the least seniority if he were a better operator than a man with more seniority.

By Mr. EDISES:

Q. Did you, as a general thing, in questions of this sort, try to adhere to the seniority list?

A. There are so many things to take into consideration. If
1329 I was to lay off a man because I was over-staffed there would be so many things I would have to consider, all tied up more or less together.

Q. Well, was this seniority list nothing more than an idle gesture?

A. No; not necessarily. It was used in connection with tricks, particularly, on trans-Pacific and trans-continental circuits.

Q. Suppose you were over-manned and it became necessary to decide between five Class C operators, one of whom was to be laid off, would you consult this list, assuming——

Mr. MERRICK (interrupting). I object; it is hypothetical, immaterial and irrelevant.

By Mr. EDISES:

Q. Assuming that these men were on the Class C list, and of approximate equal ability and value to the company, would you consult this seniority list in determining who was to be laid off?

A. Yes; I would consult the seniority list at all times, together with all other things that I would have to consider.

Trial Examiner EICKHOFF. Other things being equal, the senior man would be promoted and the junior man would be let out?

A. Right.

By Mr. EDISES:

Q. In the event that you were over-manned at the office, would you ordinarily lay off first the Class D operators?

A. I would first lay off the Class E operators.
1330 Q. And then the Class D operators?

A. Yes; ordinarily I would.

Q. And ordinarily, then, the Class C, Class B, and Class A, and so on?

A. Yes.

Q. When you prepared this list—I am now speaking of the list of eleven men—did you scan the available Class E, D, and C operators in determining who was to be laid off?

A. Yes; I scanned all of the men.

Q. And, nevertheless, you found that it would be necessary to lay off five Class A operators; is that correct?

A. As I said before, I didn't have much time to prepare the list; and if I had had more time, those men might not be on there, and others might be on. I didn't have much time. I did have a Class E operator on that list.

Q. A Class E operator is ordinarily a rather inexperienced man, isn't he?

A. Yes; he is inexperienced to a certain extent. Most Class E operators are generally taken from clerks who have worked in the office for a long time—so, outside of their inexperience in technical ability, they have quite a bit of experience in the office itself in the handling of traffic.

Q. But as far as operators are concerned, they are the least experienced?

A. Yes.

Q. And did you find, from your experience, that they are
1331 the ones who commit the blunders most frequently?

A. No, I wouldn't say that.

Q. Do you find that Class E operators commit more mistakes in handling traffic than other classes of operators?

A. No, I wouldn't say that either.

Q. Would you say that a Class E man would be likely to, on account of his inexperience, commit errors more frequently than higher classes?

A. That is pretty hard to answer.

Q. You know what I am driving at. The point is this: that this list and the various categories upon here, had a definite relationship to the efficiency and general all-around value of the men. Is that not true?

A. Yes.

Mr. EDISES. I wish to offer this in evidence as Board's Exhibit No. 16.

Mr. MERRICK. No objection.

Trial Examiner EICKHOFF. It may be admitted as Board's Exhibit No. 16.

(The office seniority list referred to was received in evidence and marked "Board's Exhibit No. 16, Witness Jorgensen.")

Mr. MERRICK. No objection, that is, if the Examiner thinks it is material and relevant. It is only encumbering the record.

Trial Examiner EICKHOFF. I have admitted it.

1332 By Mr. EDISES:

Q. Isn't it a fact, Mr. Jorgensen, that the cross-word puzzle working is a pretty general practice in the H. B. office?

A. If it is, I don't know it.

Q. Have you ever called anyone, other than Mr.—Who was it?

A. Bash.

Q. (Continuing.) Bash for working cross word puzzles?

A. Yes.

Q. Rather often, too, isn't that true?

A. No, I wouldn't say that; only once, I think.

Q. Only once, other than Mr. Bash?

A. Yes, so far as cross word puzzles are concerned.

Q. Did you frequently call other operators for other infractions of the rules?

A. Well, I try to call them whenever I see infractions of the rules. Then I call attention to it at times, and sometimes I don't.

Q. On the whole have you found it necessary to call the men's attention fairly often to infractions since you have been in your position?

A. No, I haven't. I have mostly done that by bulletins and they have been obeyed by some and disobeyed by others.

Q. And you have overlooked a great many infractions, I take it?

A. By everybody, yes. I am trying to be fair.

1333 Q. Isn't it a fact, Mr. Jorgensen, that Mr. Spanover is one of the worst violators of the telephone rule?

A. I don't believe that I have ever seen Spanover on the telephone.

Q. Does he manage to receive his phone conversations at a time when you are not in the office?

Mr. MERRICK. I object to that line of questioning.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Isn't it also true, Mr. Jorgensen, that Mr. Spanover is a great circulator among the men?

Mr. MERRICK. I object. This isn't the way to prove a case by bringing up every other individual and showing whether there were objections to him.

Mr. EDISES. I will promise not to take up every individual, if that will satisfy your mind.

Mr. MERRICK. I think that even one is more than necessary.

Mr. EDISES. Mr. Spanover had a part to play in this case somewhat more important than a number of other operators.

Mr. MERRICK. I know you are under that impression, misguided as it may be.

By Mr. EDISES:

Q. Is it not true that he leaves this circuit frequently for rather long periods?

A. Not to my knowledge.

1334 Q. Well, you surely remember the days when he was circulating the round robin, don't you? Don't you know that? Don't you remember his going to you and requesting permission to leave one morning in order that he could go to McLaughlin's house to get that round robin?

A. I don't know when that was.

Q. You let him go?

A. Yes; he had already given me that round robin the day before for me to forward to Mr. Rodman, and the next morning when I came to work there was a note on my desk from three of the check-boys. I think they told me that there was a sort of a round robin going around, and they hadn't had an opportunity to sign that, and they wanted to know if they could sign it.

Q. What did you say to that?

A. I didn't say anything. I showed Spanover the note and told him if he wished he could let those fellows sign it.

Q. That was after all three of the names—of the names were on the list?

A. I don't know: I hadn't even counted the names. I merely got that round robin in my desk, and I just merely gave it back to them. He took the list and said he would.

Q. When was the first time that you saw or heard of this round robin?

1335 A. The first time I saw the round robin was the day that Spanover presented it to me at the desk. I don't know what date it was.

Q. Where is your desk located with reference to the operating room?

A. Up in one corner.

Q. Can you see the room at all times?

A. Yes; I can see most of it.

Q. Most of the sections of the room?

A. Yes.

Q. You heard the testimony of several of the men, did you not, that it was last circulated for a couple of days?

A. Yes.

Q. Did you see the list being circulated?

A. No, I didn't see the list being circulated. I know a great many times they are circulating stuff around. I didn't pay much attention to it.

Q. You knew the list was being circulated?

A. No, not that particular list.

Q. What did you do with the list after it was presented to you?

A. I forwarded it to Captain Dodd, I believe. It may have been Mr. Rodman, but I think it was Captain Dodd.

Q. You know Mr. McDonough, of course?

A. I met him when he came out here.

Q. What was his job?

1336 A. He came out here as an operator.

Q. Did he ever do any operating?

Mr. MERRICK. I think you had better let the witness answer the question.

Mr. EDISES. I am sorry.

The WITNESS. He came out here from New York as an operator, and he was put on the H. B. office pay roll. I was home in bed, it was during my absence. The next morning when I came back Mr. Rodman asked me if he could have Mr. McDonough for solicitation work.

By Mr. EDISES:

Q. Solicitation work?

A. Solicitation work.

Q. Meaning what?

A. Get in contact with the customers.

Q. Do you know of any reason why Mr. Rodman should have asked for Mr. McDonough particularly for that work?

A. No, I don't know. He merely asked me if he could have him for solicitation work, and naturally I said, "Yes."

Q. McDonough is a tape operator, is he not, or is he?

A. I believe he is.

Q. You don't know if he is a manual, or a tape operator?

A. He came out here from New York; I never had a chance to determine what he is.

Q. Are there any other solicitation employees in the Mackay office?

1337 A. Yes.

Q. What pay roll do they appear on?

A. The chief solicitor down there is Mr. Nelms. He is on Mr. Dewey's pay roll, but there are other times when certain men of the H. B. operating room go out to do solicitation work, and they are let off for that purpose.

Q. Of the men regularly employed for solicitation work, they all appear on pay rolls other than the operating pay roll, is that not correct?

A. That is right.

Q. During the entire period that Mr. McDonough was in San Francisco, working for Mackay, his name remained on the operating pay roll, did it not?

A. It did.

Q. Did you ever have any conversation with Captain Dodd or Mr. Rodman, or any other official of the company, in regard to McDonough's functions in San Francisco?

A. No.

Q. Wasn't it understood that he was to do something in the nature of company relations' work?

A. Not so far as I know.

Q. No one ever told you that?

A. Not so far as I know.

Examination by Trial Examiner EICKHOFF:

Q. Did he ever serve as an operator under you?

1338 A. No, he didn't.

Q. Was he in the H. B. operating room much of the time?

A. At times.

Q. What was he doing during those times?

A. I don't know; I saw him around there several times, just like any other solicitor around here.

Q. Do the solicitors usually go to the operating room when they come back to the office?

A. Yes, they go in there. I saw Mr. Nelms in there a couple of times. He examined files and so forth, solicitation tips. I don't know much about commercial work.

Q. Their desks are in the operating room?

A. No, their desks are in the city office.

By Mr. EDISES:

Q. Mr. McDonough was in the operating room quite frequently, however, wasn't he?

A. I wouldn't say he was there any oftener than any solicitors there.

Q. Didn't he have a number of conferences with you?

A. Never had any conferences with me, no. We went out to lunch a couple of times; he came up to my desk a couple of times.

Q. Didn't you discuss the meeting to be held on October 10?

A. No, I didn't.

Q. You know how that meeting came to be called?

A. No, I don't know how it came to be called.

1339 I was informed that there was going to be a meeting downstairs.

Q. Who informed you?

A. I don't remember who it was. I just learned it, anyway, that the clock room had been provided for the operators there. I didn't think it was very strange. The boys wanted to get together.

Q. How did you know that?

A. Well, I don't know; somebody told me that. Oh, yes; Let's see. I think it was Mr. Hatch that showed me that little thing that went around, and he asked me if it would be all right to circulate it.

I said, "Yes, I didn't see anything wrong with it."

Q. Did you give the men permission to go to the meeting?

A. Yes, I did.

Q. Were they docked in their pay?

A. No, sir.

Q. How many men who were supposed to be on duty went to the meeting?

A. I couldn't say.

Q. Was it over ten?

A. It might have been.

Q. Was it over thirty?

A. Oh, no.
Q. Couldn't have been that many?
A. Couldn't have been that many; it was after four o'clock.
Q. Can you give an estimate of the approximate—how many
1340 men went to the meeting while they were supposed to be on duty?
Mr. MERRICK. Is this number very material?
Trial Examiner EICKHOFF. It might have some weight.
A. I would say a dozen or so; ten or twelve.

Examination by Trial Examiner EICKHOFF:

Q. Why weren't they docked?
A. We never—I never made it a practice of docking anybody to attend any meeting of the company.
Q. Any meeting?
A. No.
Q. Any time a man or group of operators wanted to go to a meeting they could do it on company time?
A. They never had any meetings they went to on company time except when they were in Mr. Rodman's. They were never docked for that.
Q. Was that a meeting of company officials?
A. No; it wasn't.

By Mr. EDISES:

Q. Do you know of any other occasion when as many as half a dozen were permitted by you or any other company official, to attend a meeting during working hours without loss of pay?
A. I don't know of any meeting that has been held where twelve men have been present—no.
1341 Q. Whether it was an ARTA meeting or any other type of meeting?
A. No; I don't know.
Trial Examiner EICKHOFF. You didn't know the purpose of this meeting?
The WITNESS. Yes; I knew the purpose of this meeting. That was stated, I believe, in that slip of paper. The New York operators who had come from New York wanted to tell the H. B. operators what had taken place in New York. I didn't see any thing wrong in that.
Q. You also saw the wording on the paper that was testified to by Mr. Hatch, I believe—namely, that the men were to consider the advisability of setting up a Relations Committee of H. B. men, similar to that which was set up in New York?
A. Yes.
Q. Of course, you understood that ARTA was not connected with that committee?
A. I didn't give it any thought at the time.
Q. Did each of these five men—Salisbury, Rone, Palmer, Bash, and Loudermilk—have a particular job in connection with a certain

circuit? In other words, was their job definite and identifiable so that it would be possible to determine whether that particular job had been filled by someone else?

A. Oh, yes.

1342 Q. Who has filled Mr. Loudermilk's job?

A. I can't say just who has filled the place, without looking in my records; but I can say that the men that are now working on the New York circuit in their places are White and Monroe and Sam York and Eddie Barlow.

Q. Two of those were not employed at Mackay prior to the strike?

A. That is right.

Mr. MERRICK. At H. B. office?

By Mr. EDISES:

Q. At H. B. office prior to the strike—which ones are they?

A. Monroe and White.

Q. What ratings have they?

A. Class A.

Q. What ratings before they came to the H. B. office as operators?

A. I know Monroe is a Class A operator in New York. I don't know what class White had. I think he was a B or C; I am not sure.

Q. How about the jobs of the other men?

A. Sam York was demoted from supervisor, made a Class A operator.

Q. How about—Let's see! You have mentioned the jobs of which men as having been filled—which men have you mentioned already?

1343 A. Monroe, White, and Sam York.

Q. No, I am afraid I don't make myself clear. Whose job did Monroe take?

A. Well, I said I couldn't say that without consulting my records.

Q. Have you your records here?

A. No, I haven't. It would be quite an involved affair. It is reported on a certain form that gives certain information as to who takes whose place.

Q. You have mentioned the New York circuit?

A. Yes.

Q. Which of the five men who have not been re-employed were on the New York circuit?

A. Four men.

Q. Four of them?

A. Four or five.

Q. Including Salisbury?

A. Oh, who are on that circuit?

Q. Yes, which of those five men were on the New York circuit?

A. Rone, Palmer, and Loudermilk.

Q. Now, what circuit was Bash on?

A. He was on the Honolulu circuit.

Q. Who is taking his place on the Honolulu circuit?
A. An operator that was working on Shanghai.
Q. A man who was employed at the H. B. office prior to
1344 the strike?
A. Yes.
Q. What class is he?
A. A.
Q. Prior to the strike?
A. Yes, A.
Q. Who took his place?
A. Operator Foley.
Q. Foley? Did he come in after the strike?
A. He was working with H. B. before the strike.
Q. He was working at H. B. before the strike?
A. Yes.
Q. Which is the other that we haven't accounted for?
Mr. MERRICK. Salisbury.

By Mr. EDISES:

Q. What circuit was he on?
Mr. MERRICK. I object to any questions concerning Mr. Salisbury. He is not one of the complainants here.
Trial Examiner EICKHOFF. Well, I don't see that. This may be refinement of some line of testimony, but I think it is pretty remote.
Mr. EDISES. I feel that it is important to determine if it is the case that the places of these Class A operators, who have been admitted to be efficient operators, have been filled by men less
1345 efficient. If such is the case, I feel that it is important to demonstrate it on the record.
Mr. MERRICK. I certainly don't see the relevancy or materiality even if he could show that. Certainly as far as who took Salisbury's place is not in issue here.
Mr. EDISES. It certainly has a bearing on why these men were refused employment.

Examination by Trial Examiner EICKHOFF:

Q. Were the five men—Loudermilk, Phelps, Bash, Rone, and Palmer—your five worst Class A operators?
A. Phelps did not work at H. B.
Q. How about the rest of them?
A. Were the worst Class A operators?
Q. Yes.
A. Not as operators, no.
Q. Any way you want to take it.
A. Well, I explained why they were out on that list. I wouldn't say they were the least efficient as operators.
Q. Take any definition you want. Take your own definition.
A. They were the least desirable operators from the company's standpoint, out of the whole group.

By Mr. EDISES:

Q. Have you any reason to add to the reason you have stated formerly as to why these men were the least desirable operators from the company's viewpoint?

A. No, I haven't.

1346 Q. Didn't you later tell some of these men you favored their re-employment?

A. Well, I'd like to see them all back, as far as I am concerned.

Q. No; that you specifically favored their employment?

A. No; I didn't say that. I'd say I would do everything I could for them to get them re-employed.

Q. You didn't tell them that so far as you were concerned they should be back at work?

A. Well, I more or less feel that way now. I would like to see them back at work.

Q. Did you tell them that then, immediately after the strike?

A. No; I didn't. I don't think I told them that.

Q. Didn't tell Loudermilk?

A. No.

Q. Any of those men that?

A. No; I told them I would do everything I could to get them reinstated.

Q. The matter rested in your hands, did it not?

A. No; after they put in their applications all the vacancies were filled. All that I could do would be to forward the applications; and I talked both to Captain Dodd and Mr. Rodman about them, and I said that we ought to recommend to Mr. Stone that they be

1347 permitted to return just as soon as there was a vacancy, and that was done. So, I felt I had done my part and promises to them.

Q. Well, if you felt that way about these men a day or so after the strike, why did you put them on this list in the first place?

A. Because I had to make up a list; and I took the men who should be out if anybody should be out. If nobody had stayed, out of the men coming from the east, they would still have been here. They wouldn't have been out at all. In other words, I was trying to put men on that list that were the least desirable at that time, to the company, that is as I saw it.

Q. You wouldn't say that you later told them you had nothing to do with it, and as far as you were concerned that they should be back at work, or words to that effect?

A. Not exactly that way.

Q. To that effect?

A. No; you must have misunderstood.

Q. Now, to use the vernacular, were you passing the buck to Mr. Stone in these cases?

A. No; I wouldn't say that. It is a peculiar thing with that list— it would be only important to me in two cases: If all the men should

remain here—that is, coming in—all the men would have been out.

If all the men on the list of 11 had come back the same morn-
1348 ing, or during the day, I would have had so many men over, and so many men from New York would have stayed, then it would have become my duty to go over the list carefully—that is, provided they had all been taken back conditionally and placed at work; then, I would have had to go over the list carefully and recommend—I suppose I would have consulted either Captain Dodd or Mr. Rodman as to whom of these eleven men, as to who should be laid off on account of these other men staying.

But, in this particular case it was never necessary for me to do that because the men didn't apply for their jobs until all the others had been filled, and the other men on the list had been reinstated.

By Mr. EDISES:

Q. Mr. Jorgensen, does it strike you the least bit odd that, of the eleven men who were on the list, the five who were most active in the union activities have not gotten their jobs back?

A. Well, I think it is funny they didn't come back to apply for their jobs when the others did. In one particular instance, I want to say when Rone came and applied to me at 3:30 in the afternoon, I believe I told him something to the effect, "Why didn't you come earlier?"

I had even gone to the extent of telling Bash earlier in the morning to get hold of Rone, and I also asked Bash, I believe, why he didn't put in his application earlier.

Q. You knew Bash didn't make any effort to phone these
1349 men?

A. I knew that, but it must have been generally known that the strike was over. All the men kept in touch with each other.

Examination by Trial Examiner EICKHOFF:

Q. How many substitutes are there in your office during the present time that came here during the strike?

A. Substitutes? Operators?

Q. Yes; from the H. B. office.

A. During the strike?

Mr. MERRICK. I think, Mr. Examiner, you might clarify that.

By Trial Examiner EICKHOFF:

Q. Men who were brought in to fill the places of those on strike.

A. There are three, five—five.

Q. Five?—And there were, all together at one time, how many? What was the biggest number you had?

A. Oh, you mean everybody, including New York, Chicago, Los Angeles—nine, sixteen, eighteen.

Q. Eighteen. So thirteen left after the strike?

A. I can't state just definitely.

Q. Approximately 13 left?

A. Yes.

Q. Did they leave in a group, or body, or one at a time?

1350 A. No; there was some of them that arrived from New York that went up to Portland, and some of the men returned to Los Angeles the next day after the strike, I believe it was. So that, there were only a few days after the strike—anyway, there were only about six men left, I think—five or six.

Q. As these men left, how did you go about filling their places?

A. Well, when these men from Los Angeles had left, they were not working. When all the H. B. employees came back, why, they didn't work. They had been working a long time during the strike. They were resting, and they just left when they got ready to leave, a day or so afterwards.

Q. Well, as vacancies occurred subsequent to the strike, how were they filled?

A. I don't believe there has been more than a couple that have been filled by transfer—there was one transfer from Chicago.

Q. Since the strike?

A. That was an exchange. There wasn't a vacancy:

Q. Well, I am talking now about vacancies.

A. I don't remember that there has been any vacancies. Yes; there has been a couple of men left whose places have not been filled—yes.

Q. Have not been filled? Do you consider you have two
1351 vacancies at this time?

A. No; not vacancies at this time. I have a certain complement of H. B. employees. There are so many in each group that I am supposed to have. Before the strike, I could have hired seven more operators without having to ask for authority. There were always vacancies in each class.

Q. Well, are you operating with fewer men now than you had prior to the strike?

A. No; I don't think so. As a matter of fact, I have a couple of men too much. Our traffic load is down. It has been down about 500 or 600 numbers on an average, daily, since the strike.

By Mr. EDISES:

Q. To what do you attribute that falling off of traffic?

A. I don't have any way of knowing.

Q. Do you think the boycott has anything to do with it?

A. I couldn't say; I haven't given it very much thought.

Q. Have any of the circuits been abandoned since the strike?

A. No.

Q. Isn't it a fact, Mr. Jorgensen, that in at least—namely, one case—namely that of Mr. Murphy, he didn't show up until some time Wednesday?

A. He didn't show up until some time Wednesday morning.

Q. And he got his job back?

1352 A. Yes, but he reported to Supervisor Buckley in the afternoon, and he told him that he was permitted to stay away until the next morning.

Q. Do you have any first hand knowledge as to whether or not Murphy re-applied for work Tuesday afternoon?

A. That was Supervisor Buckley. He reported to me. I was home asleep at that time.

Q. Mr. Jorgensen, you have testified that five men—Salisbury, Loudermilk, Rone, Bash, and Palmer—were, for various reasons, unsatisfactory, and that was why you put them on the list. You have also testified that the reason these men have not gotten their jobs back is because they showed up for work too late.

Now, what is the reason that they are out of their jobs?

A. Because there were no vacancies when they applied for work.

Examination by Trial Examiner EICKHOFF:

Q. Is that the real reason?

A. Yes, that is the real reason.

Q. The only reason?

A. The only reason that I know of.

Q. It is not a question of desirability at all?

A. No, I have a perfect right at this moment to re-employ the men if I have a vacancy. I have authority to put them
1353 back to work any time there is a vacancy, and I intend to do so.

Q. In other words, if they were undesirable men, they are not undesirable any more?

Mr. MERRICK. I don't think that is a fair question. He didn't say that he would have discharged them at that time.

Trial Examiner EICKHOFF. That is true.

A. If the question had been left up to me to pick men, then it is not necessary that these men would have been the ones I would have picked. I would have had to go over that list very carefully, and then I would have had the chance when I didn't make up the list in the first place. I wouldn't say that these men would be the ones that would have been left out.

By Mr. EDISES:

Q. Now, Mr. Jorgensen, did you phone for the police on the night of the meeting at the Bellevue?

A. I did.

Q. What was your reason for phoning?

A. That was at the request of some of the men up there.

Q. What men?

A. That were in the room.

Q. What men?

A. Whoever was there.

Q. Who? Don't you know who?

A. I can't say who made the actual request. Some of them
1354 were afraid, and saying there was rumors of violence, and longshoremen. That is what I heard in the general conversation there. Somebody, I am sure, asked me if I didn't think it a good idea to have police protection.

Q. You had the same idea yourself?

A. I wouldn't say so, no.

Q. You didn't have any feelings one way or the other?

Trial Examiner EICKHOFF. Does it make any difference whether the police were there or not?

Mr. EDISES. The question of who initiated the idea of phoning in the first place, that is a question of who dominated this meeting.

Trial Examiner EICKHOFF. I don't think so.

Mr. MERRICK. I can't see that.

Trial Examiner EICKHOFF. They all knew it was an unorthodox meeting. Mr. Hatch admitted—admitted that he was going to be in hot water by the union.

By Mr. EDISES:

Q. Did you speak to the police officers after they arrived?

A. Some, I believe. I don't know whether at first or later. I noticed a couple of men came up and asked if it were necessary to stay any longer. I don't remember just what was said but I believe I told them they might as well stay until it was all over. I thought I had a perfect right to do that. I didn't think of any
1355 pride in that regards. I was just merely trying to protect the men if there should be any violence.

Q. Did you feel you needed protection yourself?

A. No.

Q. Did you see the men personally when they came back to work on the morning of October 8?

A. We all walked down together.

Q. So that you were there at six a. m.?

A. Yes, sir.

Q. Anything said at that time about re-applying for work?

A. No; not at that time. I merely told everybody to take their positions and I told—instructed the supervisors not to let anybody go before all positions had been filled, and if they could let any of them go before the regular show-ups, to tell them to call back whenever they were supposed to come back.

Examination by Trial Examiner EICKHOFF:

Q. How many reported for duty that morning?

A. I think there was about 34.

Q. How many during the balance of the day?

A. I couldn't say the exact number, but I know that at four o'clock in the afternoon that we had 68 employees there, which was the number that we had before the strike.

Mr. MERRICK. If the Examiner please, I have a memoran-
1356 dum prepared by this witness, and I think it would help him to refresh his recollection, if you want to use it.

Mr. EDISES. On what question, Mr. Merrick?

The WITNESS. That was all taken on the time sheets. I wasn't there.

Mr. EDISES. Then, I am going to oppose the witness' being permitted to see that memorandum if it was the memorandum that was prepared subsequent to the occasion. It certainly can't have any utility as a means of refreshing his recollection.

Mr. MERRICK. I don't know where you get that idea.

The WITNESS. I can't remember when the memorandum came in. I went to bed shortly after.

By Mr. EDISES:

Q. Was a time sheet kept for Tuesday, October 8th?

A. Yes.

Q. Have you that time sheet?

A. I believe you have it.

Mr. EDISES. No; I have the time sheets commencing October 9. I recall that the last time I asked for that time sheet I was told by Mr. Jorgensen there was none. Mr. Rodman then stated that there must have been one, but I have never received it.

Mr. MERRICK. Well, if you haven't, that is because you failed to request it after I brought it down.

1357 Mr. EDISES. Well, I hereby request it, then.

The WITNESS. It may be in that large envelope there, Mr. Merrick, I thought I gave it to you, though.

Mr. MERRICK. Here it is.

Mr. EDISES. May I see it, please?

Mr. MERRICK. Here is the original time sheet.

(Counsel Edises examines original time sheet.)

Mr. EDISES. I apologize for this delay, Mr. Examiner, but I have a letter that I am trying to find that has a bearing on this.

Trial Examiner EICKHOFF. Well, let us take a very short recess—not over five minutes.

(At this point a recess was taken after which proceedings were resumed as follows:)

By Mr. EDISES:

Q. I show you a document, three pages, headed, "Operators' Time Sheet," and ask you if that is the time sheet for October 8, 1935.

A. It is.

Q. And did you prepare it?

A. Did I prepare the time sheet? No.

Q. Who prepared it?

A. That is prepared by the week. They are all made up for a week at a time.

Q. When are the entries made on the time sheet?

A. At the time the men come to work.

1358 Q. Who makes them?

A. Whoever supervises—whatever supervisor happens to be there, or whatever supervisor is in charge of the men who come on watch.

Q. Do you know who made the entries on the morning of October 8th?

A. I couldn't say for sure; it was a pretty much confused mess, but I can tell by the pages there.

Q. Can you tell by that handwriting [indicating on time sheet]?

A. Supervisor Buckley.

There is Mr. Layman [indicating on time sheet].
This is Layman's, that is Buckley's [indicating on time sheet].
This is Buckley's [indicating on time sheet].
I think the other is McLaughlin's [indicating on time sheet].
This is Buckley's [indicating on time sheet].
This is my notation behind there [indicating on time sheet.]
Q. This is your notation?
A. Yes, this one here is Buckley's [indicating on time sheet].
McLaughlin's [indicating on time sheet].
My own [indicating on time sheet].
1359 McLaughlin [indicating on time sheet].
McLaughlin [indicating on time sheet].
McLaughlin [indicating on time sheet].
I think these are men——

Mr. MERRICK. I can't see this—how this is helping the record much. It doesn't explain anything.

Trial Examiner EICKHOFF. No.

By Mr. EDISES:

Q. I call your attention to the entry marked "Mulligan" and under "Remarks" is the word "Absent."

A. Yes.

Q. Do you know whose entry that was?

A. Buckley's.

Q. Now, after the word "Absent"?

A. "Sick."

Q. Is the word in parenthesis "sick"? Do you know whether that word "sick" was added subsequently?

A. No, I don't know; but Mulligan was never considered as having been on strike. He had been sick all the time. He called me up several times, told me personally he didn't consider himself on strike. We didn't consider him on strike.

Q. I call your attention to the entry after the name of Mr. Murphy. Under the word "Remarks" appears the word "Absent." And then it is evident that there has been an erasure
1360 and there is an entry in a different handwriting. Can you explain the circumstances under which that took place?

A. I don't know about the erasure, but I know that Mr. Buckley informed me about this some time later. Just the circumstances under which Murphy came to work—Mr. Murphy came to work on the morning of the 9th at 9 a. m., and he came up to me. He asked if he could go back to work. I told him, "Why, of course."

Q. That was on the morning of the 9th?

A. I didn't know why he questioned his right to go back to work. So later on, when I saw this time sheet I noticed that I asked Buckley—I thought it was funny he should ask me that, so I asked him if he hadn't been at work the previous day.

He said "No."

We met him downstairs and Mr. Murphy asked him if he could come to work the next day. Mr. Buckley told him it was all right.

Q. That would constitute, as far as you are concerned, an official re-application for work—if a man met a supervisor and asked him.

A. As far as I know, Mr. Murphy was on the way up to see somebody about coming to work the next morning.

Q. Isn't it a fact that Mr. Loudermilk and Palmer re-applied for work Tuesday night?

1361 A. That is right.

Q. And Mr. Murphy didn't re-apply until the following morning?

A. No, he re-applied in the afternoon.

Q. But you didn't know anything about that?

A. I don't know anything about what went on there; I went home the next day.

Q. Nevertheless it is true that when Loudermilk and Palmer applied for Tuesday night, at least one job—Murphy's had not been filled.

A. It had been filled as far as his application had been concerned. Mulligan, for instance, hadn't been at the office. He had been on sick leave but he called me. Some of the other men were the same way.

Frye had been sick during the strike. He had an infected finger. He wasn't able to come to work. But I didn't consider him out on strike.

Q. Isn't it a fact that Mr. Murphy had not applied at the Mackay office at any time Tuesday?

A. The only thing I know about it is that he was on his way up to the office, and met Mr. Buckley in front of the office building downstairs.

Q. When did Mr. Buckley first tell you about that?

A. He told me about this three or four days after the strike—after the eighth there.

1362 Q. Then this notation was added?

A. That is right.

Q. So you had no official knowledge that Murphy had applied Tuesday afternoon until several days later?

A. No, I didn't have any official knowledge.

Q. Then consequently, when Loudermilk and Palmer applied for work there was at least one job vacant?

A. I don't know, because Buckley sent in a list of employees to Captain Dodd in my absence, telling what men had reported, and I imagine Mr. Murphy's name is on there.

Mr. EDISES. Is that list available, Mr. Merrick?

Mr. MERRICK. We can produce it.

Mr. EDISES. Can we have that tomorrow morning?

Mr. MERRICK. As I told you before, I have a memorandum that this witness prepared, of the days and times these men came back to work.

Mr. EDISES. It ought to be evident now that certain applications are not within his own knowledge. What good would the list do? I prefer to have the record.

Mr. MERRICK. You are a little late in asking that.

Mr. EDISES. I have no knowledge that this list existed, and I have asked for this time sheet day after day.

Mr. MERRICK. And I have had it day after day, ready for you.

By Mr. EDISES:

1363 Q. Can you tell from the handwriting who wrote the word "Absent" after Mr. Murphy's name?

A. That is Mr. Layman.

Q. Can you likewise tell who wrote the "Absent" after Mr. Hardin's name?

A. That is Mr. Buckley.

Q. Were Layman and Buckley both on duty at the same time on Tuesday?

A. Yes, sir.

Q. I call your attention to the entry after Mr. Hardin's name, "Absent." Isn't it a fact that Mr. Hardin was taken back to work and subsequently resigned?

A. Taken back to work?

Q. Yes. Permitted to come back on the job, and subsequently resigned?

A. No, he wasn't. He came down to see me the next morning.

Q. Tuesday morning, or Wednesday?

A. Wednesday morning.

Q. He didn't show up for Tuesday morning at all?

A. No, not while I was there.

Q. So that he was another one of the persons on the list who did not show up Tuesday morning?

A. Yes.

Q. I call your attention to Mr. Bartlett's name on page 2. Who wrote the word "Absent"?

A. Mr. Buckley.

1364 Q. And then there is an entry in a different handwriting.

A. That is mine.

Q. What has been added after the word "Absent"?

A. "Has informed me would be at work regular hour."

Q. When did he inform you of that?

A. He informed me in the forenoon.

Q. Of what day?

A. On the eighth.

Q. And where did that conversation take place?

A. Over the telephone.

Q. Over the telephone?

A. Yes, sir.

Q. Isn't it a fact that one or more of the five telephoned you on Tuesday, October 8th?

A. One of the five? Who do you mean?

Q. One or more of the five men?

Mr. MERRICK. I object to that as an attempt by the attorney for the Board to impeach his own witness. The five he has called; and they have testified to the times of their applications, and correctness of their statements contained in the applications; and the time when they applied as specified in the applications. If he is trying to get this witness to state that those five applied for re-employment at any other time than that specified in their applications it
1365 amounts to impeachment of their testimony. I object to it.

Mr. EDISES. I don't recall that I asked them about any phone conversation.

Mr. MERRICK. If they don't bear on the time the applications are made, they are incompetent, irrelevant, and immaterial, and I object to them on that ground.

Trial Examiner EICKHOFF. He can prove facts which are inconsistent with the testimony that may have been given by his witnesses.

Mr. MERRICK. Even though admitted at the times they apply, they may go on different times. Their applications, Mr. Examiner, are confirmations of verbal applications which were made at a previous time.

By Mr. EDISES:

Q. Who typed those out?

Mr. MERRICK. Immaterial. Your witness has sworn that those are accurate, and they did not apply for employment prior to the times mentioned in those applications.

Mr. EDISES. Have you any serious objection to my asking him whether those five men phoned on Tuesday?

Trial Examiner EICKHOFF. I will admit the question.

A. No, none of them phoned me on Tuesday.

By Mr. EDISES:

Q. None of them phoned you Tuesday?

A. No.

Q. I call your attention to the entry of Mr. Loudermilk; after his name there appears the word "7 a. m." or "7 a."

1366 A. Yes.

Q. Further along on the page, under "Due on," "3 p.," presumably meaning afternoon. That entry and the previous entry have been crossed out. Can you explain just exactly what happened there?

A. Loudermilk's trick used to be 6:15 a. m. to 2:15 p. m. when these sheets were made up. But the trick was changed to 7 a. m. to 3 p. m. later on. That was his trick when he should have shown up at 7 a. m.

Q. I take it then that these entries—the entries in this first column—represent the time the men should have shown up?

A. Yes.

Q. And not the time when they did show up?

A. It depends on the entries. Patterson should have shown up at four p. m. and should have been off at midnight.

Q. Have you any way of telling from that document whether the entry in the first column under the word "On" represents the time they should have shown up, or the time they did show up?

A. The entry down here [indicating time sheet] is when they should have shown up, except in that particular case.

Q. Except in the case of Mr. Loudermilk?

A. That is right; his trick was changed on account of—I
1367 think it was daylight saving time, New York had gone on. We change their tricks every year.

Q. Was a similar change made in any other case?

Mr. MERRICK. You haven't any doubt that Mr. Loudermilk didn't show up that morning?

Mr. EDISES. I would certainly like to find out a few things.

Mr. MERRICK. It seems to me you are wasting a lot of time.

A. I think that was the only trick that was changed.

By Mr. EDISES:

Q. Why? Was his trick in any way peculiar?

A. The earlier show up, whenever there is a change of time—daylight saving time, New York—they are moved up one hour, and traffic starts coming in at that time. I think Mr. Loudermilk will confirm that his trick was changed.

Q. Weren't there other tricks that corresponded to his?

Mr. MERRICK. I object to this testimony. What do you gain by this? To show that Loudermilk was being discriminated against after he left the employ of the company?

Mr. EDISES. I am interested to what extent the material on this document is believed; to what extent his records indicate what actually did happen; and what extent it might have happened.

Mr. MERRICK. If you don't want to put this in evidence, you don't have to.

1368 Mr. EDISES. I'll reserve my decision until I find out how much is to be trusted.

By Mr. EDISES:

Q. Were there any other tricks that corresponded to Mr. Loudermilk's?

A. No; I think that was the only one.

Q. Did he go to work at a time when no one else did?

A. I think there was generally one man on the New York circuit that showed up one hour earlier, during daylight saving time. Then, whenever that is cut out, that man is moved back an hour because traffic doesn't start coming in so early when the time is moved back in New York. But that is a generally known thing around the office, and I think Mr. Loudermilk will confirm that.

Q. Is this the only record of original entry which shows the times that the men showed up Tuesday morning at the H. B. office?

A. Yes.

Q. And are you in a position to state definitely the significance of each entry under the word "On" in the first column?

A. Yes; I am.

Q. Do you know positively in each case whether the entry means the time they did show up, or the time they were supposed to show up on this morning?

A. I can't tell you, except up until 10:30, because I
1369 left the office at that time, but there is not—very seldom—that a mistake is made in that entry, so I don't see why it should be made in this case. Those things are taken care of by the supervisors, generally.

Examination by Trial Examiner EICKHOFF:

Q. How does Mr. Loudermilk's name happen to be on that?

A. Well, these sheets are made up a week in advance—sometimes two weeks in advance.

Q. This has on the list all the names of the men who worked there before the strike?

A. No; just of the operators and check clerks.

Q. Yes; and does it also have the names of those who came in from the outside during the strike?

A. Some of them. To fill in during the strike?

Q. Yes.

A. On Tuesday, the 8th, I don't believe any of those men worked—that is, Los Angeles men. There are a couple of men there—Chicago men—that worked. Their names are on there. I believe all the New York men went to sleep that day, had been traveling all the time, so they weren't marked on any sheet until they actually went to work the next day.

By Mr. EDISES:

Q. Mr. Jorgensen, after the name of Mr. Humphries is the entry, the printed entry, "Noon," which has been scratched out, and
1370 above it, "10:15 a. m." It is evident also that there has been an erasure of a portion of the last indicated time—"10:15 a. m."—do you know anything about that?

A. No, that is Mr. Buckley's handwriting. Humphries was supposed to come to work at noon, as I see it here. He reported to work at 10:15 a. m., and was put to work. I believe I told Mr Humphries that when he reported he would be on a temporary status, until his application was passed on by Mr. Stone. He was one of the men on the list.

Q. Do you know anything about the apparent erasure of "6:15 p."—which probably means p. m.—under the column entitled "Due off," still referring to Mr. Humphries?

A. Naturally, I have a knowledge of this, so I know what it means, Mr. Humphries was supposed to work eight hours, and he showed up at 10:15, so in order to work eight hours he would be off at 6:15. That is what it means.

Q. I call your attention now to the entry entitled "Frye," and to the word "unworked."

A. Yes.

Q. Under the heading "Remarks"—That means he did not work that day?

A. He didn't work until 8 a. m.; he should have worked from midnight until 8 a. m.

Q. But he didn't work?

A. No.

1371 Q. And after the word "unworked" is the word "Sick," in parenthesis, obviously in a different handwriting.

A. That is mine. That is what I mentioned a little while ago, that Mr. Frye had an infected finger. He was sick all during the strike. We didn't consider him on strike. He had called me up on the phone a couple of times.

Q. There are two pencil entries on the bottom of the second page, entitled, "White," and "Senseman."

Under the first column are the word "10 p.", presumably meaning "p. m." Does that mean that those men didn't show up until 10 p. m. October 8th?

A. Yes, they had been sleeping.

Q. They were strike breakers?

A. They were Mackay Radio employees coming from Chicago.

Q. Mackay employees coming from Chicago?

A. Right.

Q. I call your attention on page 3 to the name of Mr. Kroll, and that under the heading "Remarks" appears the word "Absent." In whose handwriting was that?

A. Mr. Buckley's.

Q. And after that an addition in a different handwriting, reading "Called at 2 p. m. permitted to show up regular time tomorrow." In whose handwriting was that made?

A. That is mine.

Q. Under what circumstances was that made?

1372 A. That was Mr. Buckley who told me that.

Q. Buckley told you that Kroll had told him?

A. No, that Kroll had called up.

Q. That Kroll had called him at 2 p. m.?

A. Oh, I remember. It was while I was home to bed then. I remember that now; there was a mixup on Kroll's and Murphy's. When Mr. Buckley told me about this, he got mixed up with Kroll and Murphy. That is why this erasure was made here. I remember that. He told me that the next morning. I was mistaken about this other stuff. When I say Kroll, I say that.

Q. Is it a customary practice for more than one person to make entries on the time sheets with reference to a single name?

A. Oh, yes.

Q. Did you have the feeling that this particular time sheet ought to be pretty clear, or pretty complete for any reason?

A. Well, I would have to have a complete record in order to pay the men. I have to know when they show up.

Q. You didn't feel that this time sheet was of any importance?

A. I want every time sheet to be accurate; otherwise I can't pay correctly.

Mr. EDISES. I wish to submit this in evidence as Board's exhibit.

1373 Mr. MERRICK. No objection.

Trial Examiner EICKHOFF. It may be admitted in evidence as Board's Exhibit No. 17.

(The operator's time sheet referred to was received in evidence and marked "Board's Exhibit No. 17, Witness Jorgensen.")

Mr. EDISES. One further question.

Trial Examiner EICKHOFF. Only one or two.

By Mr. EDISES:

Q. You testified that Murphy and Kroll were switched around, is that right?

A. There was some mix-up on this. This is quite a long time ago. I don't remember the circumstances, but I believe Mr. Buckley could explain it.

Q. You stated that Murphy was the one who informed you that he was sick when he reported in person that afternoon?

A. No, Murphy didn't report to me. Murphy reported to Buckley.

Q. Reported to Buckley?

A. I don't remember the circumstances. One's wife was sick, and the other was sick himself. Murphy didn't feel good, and Kroll's wife was sick. I think that was it. He had been off at four p. m. anyway, I think.

Mr. MERRICK. I take it, Mr. Edises, this document is now trustworthy?

1374 Mr. EDISES. I don't care to commit myself on the credibility of that document.

Mr. MERRICK. Are you offering in evidence a document you don't believe to be trustworthy?

Mr. EDISES. If it were possible to offer it in the belief that it didn't tell the whole story, I would be pleased to do it.

Mr. MERRICK. Since he had offered it in evidence, I wondered if he had come to any conclusion.

Trial Examiner EICKHOFF. He may contradict it if he wants to. Well, I think we had better adjourn until 10 o'clock in the morning.

(Thereupon at 4:12 p. m. the hearing in the above-entitled cause was adjourned until 10 o'clock a. m., Saturday, December 14, 1935.)

[Title omitted.]

1375 265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Saturday, 14, 1935.

Met pursuant to 10:05 o'clock a. m.

Trial Examiner EICKHOFF. You may proceed, gentlemen.

Mr. EDISES. Will you take the stand, Mr. Jorgensen.

ANDREW JORGENSEN, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

1376 Trial Examiner EICKHOFF. Mr. Reporter, will you read back two or three questions and answers?

(The last three questions and answers were read aloud by the reporter as above recored.)

By Mr. EDISES:

Q. Mr. Jorgensen, you paid for the room at the Bellevue Hotel, did you not?

A. I did not.

Q. You did not?

A. No, sir.

Q. Who did?

A. I don't know. I never have seen the bill.

Q. You heard Mr. Hatch testify that he didn't, didn't you?

A. Yes, sir.

Mr. MERRICK. If it will ease your mind, I will say it has not been paid yet, Mr. Edises.

Mr. EDISES. And the bill has been sent to you, I take it, or to the Mackay Radio; is that correct?

Mr. MERRICK. To the Mackay Radio; yes.

Mr. EDISES. The Mackay Radio intends to pay it, I presume?

Mr. MERRICK. We may ask for your advice as counsel as to whether we should pay it.

Mr. EDISES. I will be happy to offer it at my usual rates.

By Mr. EDISES:

1377 Q. You participated in the ordering of the room, however, did you not?

A. Yes, sir.

Q. And did you ask the clerk to send the bill to Mackay Radio?

A. I merely gave him my business card and told him I wanted a couple of rooms there, and I signed my own name.

Q. Did you reimburse Mr. Hatch for the money he spent in phoning the various men?

A. I don't know how much he spent. About a week after the men had come back, I asked him how about that money he spent for phone calls, and I offered to reimburse him. I didn't see any reason why he should stand the expense. The same spirit would have motivated me there as when I offered to get the room at the hotel. I knew the men had been out for a couple of days and had lost their pay, and I knew their circumstances pretty well, and I knew they didn't have any money, any too much money. Right there I gave him, I think, $1.50 out of my own pocket.

Q. Did you feel that the proceedings at the Bellevue were at all times fair and open and democratic?

A. I thought that; yes.

Q. And did that seem to be the general opinion of those present?

A. I think so; yes. There was no dissension, very much, of any kind.

1378 Q. Then why did you feel it necessary to have police protection?

A. Because the men there were afraid. I heard several remarks referring to trouble. They had heard a great deal about the longshoremen in the strike, and so forth. I merely called up because it was the desire of the men to have protection.

Q. Isn't it a fact, Mr. Jorgensen, that you felt that there was pretty good grounds for resentment by some of the men in what you were were trying to do?

A. No; I didn't really think so.

Trial Examiner EICKHOFF. I don't attach much importance to that police protection angle.

By Mr. EDISES:

Q. What became of Mr. McDonough after he left San Francisco?

A. As far as I know, he went to New York.

Q. Isn't it a fact he went to Portland?

A. I don't know if he did.

Trial Examiner EICKHOFF. Do you know where he is now?

The WITNESS. He is in New York, as far as I know.

Trial Examiner EICKHOFF. Working for the company?

The WITNESS. Yes.

Trial Examiner EICKHOFF. What is his job now with the company, do you know?

The WITNESS. No; I don't know.

1379 By Mr. EDISES:

Q. I show you a number of papers, each of which is headed, "Total number record," dating from October 1, 1935, to and including October 13, 1935, and ask you if you can identify these?

Mr. MERRICK. Those are all stipulated. They are covered by stipulation.

A. (Examining papers.) Yes.

By Mr. EDISES:

Q. And explain briefly what they are.

A. This is a report that is rendered by me to Captain Dodd every day, giving the total number of messages handled for any one day on all the different circuits at the H. B.

Mr. EDISES. I wish to offer in evidence——

Trial Examiner EICKHOFF. Are you through with this document?

Mr. EDISES. No. I wish to offer in evidence a stipulation signed by Mr. Merrick, on behalf of the Mackay Radio and Telegraph Com-

pany, and myself, referring to the number records that I have just shown to Mr. Jorgensen. The stipulation provides:

"Whereas, Mackay Radio & Telegraph Company has furnished the National Labor Relations Board with a record of radio messages handled by H. B. station (San Francisco, California) during the period October 1, 1935 to October 13, 1935, inclusive, it is hereby stipulated and agreed as follows: That said record is believed by
1380 said company to be a true and accurate compilation of all entries made during said period in the books of original entry in which all radio messages transmitted and/or received by said H. B. station are customarily entered; that said original entries were made in the regular course of business by persons duly authorized thereunto by said company; that said summary shall be deemed competent evidence on the matters contained in said books of original entry and set forth in said summary, to the same extent as said books of original entry would be competent evidence."

And I offer this in evidence, and the record.

Trial Examiner EICKHOFF. The stipulation and the records may go in as one exhibit.

Mr. MERRICK. I object to the sheets being offered from the point of view of encumbering the record. There is a lot of traffic in other cities than those involved in the strike. If Mr. Edises wants to have it appear that the volume of interstate messages handled by the company declined during the period of the strike, I would suggest he simply ask this question of the witness and have that answer on the record. It seems that that is all that the sheets will tend to show. There is no argument about it. Why don't you ask the witness that simple question? That seems sufficient.

Mr. EDISES. I should like, however, to have this detailed evidence in the record.

1381 Mr. MERRICK. I see nothing to be served at all by such detail.

Trial Examiner EICKHOFF. The question of degree might enter into it in connection with whether or not there was a burdening of commerce, whether or not commerce was affected.

Mr. MERRICK. If you are going into the figures, you have to take the seasonal variations and go back, not only to October 1st, but you have to go back three or four years, maybe, to see just what the decline was during the period of the strike as compared to what the decline was, if there was normally a decline at that time of the year, in prior years, and you have to take up business—the business index to see whether the general index of business activity was higher or lower at that time than it was at previous times. It seems to me the simple——

Trial Examiner EICKHOFF. Could we have a stipulation showing that the company's business was substantially or materially decreased?

Mr. EDISES. Mr. Examiner, if I may be permitted to say so, the evidence contained here is extremely pertinent and right to the point.

It shows clearly that commencing October 5th, the day of the strike, on some circuits there was no business whatever transacted. The same holds true to October 6th, particularly with reference to the
1382 Portland, Seattle, and Los Angeles stations which, according to this record, were closed.

Now, I submit that we prefer to have this detailed evidence in the record rather than any stipulation by counsel.

Mr. MERRICK. What has Los Angeles, Portland, and the Seattle situation got to do with this case?

Trial Examiner EICKHOFF. I will admit it as Board's Exhibit——

Mr. MERRICK (interrupting). I object to its entry.

Trial Examiner EICKHOFF. What will the next number be, Mr. Reporter?

The REPORTER. Board's Exhibit 18.

Trial Examiner EICKHOFF. I will admit it as Board's Exhibit No. 18.

(The stipulation and 13 sheets headed "Total Number Record," was received in evidence and marked "Board's Exhibit No. 18, Witness Jorgensen.")

Mr. EDISES. May I be permitted to read a short statement in regard to the admissibility of evidence of this type?

Trial Examiner EICKHOFF. It has been admitted. If there is any further dispute over some other similar evidence, why then you can go into that.

Mr. EDISES. Very well.

Will it be further stipulated that Mr. McDonough appeared on the H. B. payroll, operators' time sheet, I should
1383 say, from the period October 9th to October 29th, inclusive, during none of which time he actually performed work as an operator?

Mr. MERRICK. If you will permit me to ask a few questions off the record from this witness, I can tell whether I will or not.

Mr. EDISES. May this be off the record?

Trial Examiner EICKHOFF. You can do it in a whisper. You mean you want to ask this witness?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. Off the record.

(Discussion off the record.)

Mr. MERRICK. Will you read back the stipulation offered by Mr. Edises, Mr. Reporter?

(The stipulation referred to was read aloud by the reporter as above recorded.)

Mr. EDISES. (Continuing.) With the exception of an hour or two on the day following his arrival.

Mr. MERRICK. Yes; so stipulated.

Mr. EDISES. That is all, Mr. Examiner.

Just one more question.

By Mr. EDISES:

Q. Have you ever worked as a strike breaker?

A. No, sir.

Q. Were you employed in Seattle in 1930?

1384 A. 1930?

Q. Yes.

A. No; I wasn't. I came to San Francisco in 1930.

Q. Did you ever work during the Logan & Bryan strike at Seattle?

A. I didn't know there was a strike on.

Q. Did you work for Logan & Bryan?

Trial Examiner EICKHOFF. Is that material what the witness may have done some time in the past at some other place?

Mr. EDISES. It may possibly have a bearing, Mr. Examiner. I am willing to waive it, however.

That is all.

Trial Examiner EICKHOFF. May I ask, before cross examination, the witness one or two questions?

Examination by Trial Examiner EICKHOFF:

Q. Did you discuss the coming or going of McDonough with Captain Dodd and Mr. Rodman?

A. No.

Q. Or any other official of the company?

A. I had turned Mr. McDonough over to Mr. Rodman on the day after he came here on the 9th.

Q. So you had no discussion concerning his coming or going, or his status?

A. I did not.

1385 Cross examination by Mr. MERRICK:

Q. Mr. Jorgensen, when it becomes necessary to lay off an operator, is seniority the only factor that is taken into consideration in determining which operator to lay off?

A. No; it isn't.

Q. What other considerations are material?

A. Well, there are a great many—ability, for one thing, and a man's general attitude in the office; his technical ability, of course, enters into it; his ability to get along with the operators on the other end of the circuit; and, of course, also his ability to get along with the men in the office.

Q. That is, you mean not only the men generally in the office but men alongside of whom he has to sit?

A. Yes; that is very necessary.

Q. And when you lay off a man is it usually just because you want to reduce the total number of your force generally, or because you are laying off a man from a particular circuit or particular branch of the business?

A. It depends. Sometimes if a man is laid off just merely to reduce the force, the circuit does not enter into it. Of course, if a man is

laid off because of some infraction of the rules or because he is making a great many errors, naturally that is a special case.

1386 Q. With reference to this meeting at the Bellevue Hotel, if you had been asked by Mr. Bash, Mr. Rone, Mr. Loudermilk, Mr. Phelps, or Mr. Salisbury to attend the meeting at ARTA hall that night and state the terms on which the company was willing to take back the men, would you have done so?

A. I certainly would.

Mr. EDISES. I object to a hypothetical question like that.

Trial Examiner EICKHOFF. Sustained.

Mr. MERRICK. I submit it is a proper question, Mr. Examiner, since the attorney for the Board tried to question him along the same line, as to whether he thought this was a proper meeting at the Bellevue Hotel, what he had done to see to it that everybody was notified.

Trial Examiner EICKHOFF. That is with reference to something that actually took place.

Mr. MERRICK. But the state of his mind is the important thing.

Trial Examiner EICKHOFF. I will let you go into the state of his mind, but not what he might have done had certain things been said.

Mr. MERRICK. That shows the state of his mind by what he would have done had it been under the auspices of the union. He went to considerable length in asking this witness as to his opinion

1387 of the union. This bears very directly on that.

Mr. EDISES. You are asking him a question as to what his state of mind would have been under certain circumstances.

Mr. MERRICK. It shows his attitude toward the union, which you went into on cross examination.

Trial Examiner EICKHOFF. Let's move on; I think the answer is in.

By Mr. MERRICK:

Q. Would you have made any attempt, in such event, to see that all——

Mr. EDISES. (Interrupting.) I object.

By Mr. MERRICK:

Q. Members of the union were notified of the meeting?

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. And if you had attended such a meeting at the union hall, you would have given this same list of eleven men?

Mr. EDISES. Same objection.

Trial Examiner EICKHOFF. Sustained.

Mr. EDISES. I am required to interpose the objection so soon because the witness answers before it is possible for me to object.

Trial Examiner EICKHOFF. Will you pause a moment to see if there are any objections?

The WITNESS. Yes.

1388. By Mr. MERRICK:

Q. You didn't, or did you, request Mr. Hatch, or Mr. Burtz, or any one else, not to telephone these eleven men and notify them of the meeting? I don't think there is objection to that.

A. I did not.

Q. Why didn't you object when you learned that they were not telephoning the eleven men?

A. As I understand it, I was there for the definite purpose of stating the company's position, and I was not asked to take any part in the meeting, and I didn't want to try to influence anybody in any way.

Q. You would have done the same thing for any group that asked you to attend the same kind of a meeting?

Mr. EDISES. I object to that question on the ground that it is hypothetical.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. Did any one on this list ever object to you on the ground that you had failed to cause them to be notified of the holding of the meeting?

A. No, sir.

Q. Do you know whether any one ever complained about not having heard about this meeting at the Bellevue Hotel?

A. No, I haven't heard any objection to that.

Trial Examiner EICKHOFF. You have heard it here in the courtroom, haven't you?

1389 The WITNESS. Yes.

By Mr. MERRICK:

You heard Mr. Rone's testimony that he first heard about this meeting at the Bellevue Hotel sometime in the morning of Tuesday, the 8th, did you not?

A. Yes, I did.

Q. If he had come on upstairs at the H. B. office at that time and applied for reemployment would you have reemployed him subject to the condition that you stated in regard to the full list of eleven?

Mr. EDISES. I object to that question on the ground it is hypothetical.

Trial Examiner EICHKOFF. Overruled.

A. Yes, I would; just like I did with the other men on the list.

By Mr. MERRICK:

Q. What is the reason why Mr. Rone was not reemployed?

A. Because there was no vacancy when he applied.

Q. That is the sole reason?

A. That is the sole reason.

Q. Mr. Loudermilk and Mr. Palmer were at the meeting at the Bellevue Hotel, were they?

A. They were.

Q. If they had returned to the H. B. office at any time in the morning of the 8th and asked to be reemployed would they have been

1390 reemployed subject to the conditions you have stated?

Mr. EDISES. I object to that question. It is a hypothetical question.

Trial Examiner EICKHOFF. We went into these similar questions on your examining, I think, Mr. Edises, so I will allow the question.

A. I would have.

By Mr. MERRICK:

Q. What is the reason why Mr. Loudermilk was not reemployed?

A. Because there was no vacancy when he applied.

Q. Is that the sole reason why he was not reemployed?

A. Yes.

Q. What is the reason Mr. Palmer was not reemployed?

A. Same reason.

Q. And that is the sole reason?

A. Yes, sir.

Examination by Trial Examiner EICHKOFF:

Q. Suppose every single man had come back, would these men you just named have been reemployed?

A. They would have been reemployed under the same conditions, subject to Mr. Stone's approval. I mentioned that yesterday. That was the only time that the list would become important. If they had all returned, and we had to keep four men here, as we
1390 had to, then I would have had to make a very careful study of the list and make my recommendations.

By Mr. MERRICK:

Q. That is, you would have to pick out three or four men then?

A. (No answer.)

By Trial Examiner EICKHOFF:

Q. Yes, but you had been given a free rein, and you had already prepared a list of the operators which you thought were least desirable. Suppose the full complement had appeared immediately after the meeting at the Bellevue Hotel, would you have put them all to work at that time?

A. I would have. Three of them did come back.

Q. In other words, you would have over-staffed the office at that time?

A. Yes, it would have been necessary.

Q. Then although the matter was in your hands, you wouldn't have acted?

A. I would have put them on that way. Naturally, I had to make a study and find out how many men wanted to remain from the East, and from Los Angeles, and then I would have had to see how many men would have to be let out. I don't know what men would have been picked; I cannot say that. Then I would have had a chance to make a study of it.

By Mr. MERRICK:

Q. Was there any particular ranking in your mind of these
1392 eleven men on the list as to their desirability as employes?

A. Not at the time I made the list. I didn't have much time to think of it.

Q. And in the case that has been put to you by the Examiner, that is, if they had all, all of the former employes of the H. B. office had returned at approximately the same time, and four of the men that had come in had also stayed, as they did, what would you then have had to do?

A. Well, I just explained that. Then was the time that I would have to go over the list again and see who of the eleven I thought should be out, and make my recommendations through the regular company channels.

Q. That is, you would then have selected four names as being the four least desirable?

A. I would have had to do that in that case, yes.

Q. And then you would have recommended to Mr. Stone, through the regular channels, that those four men's applications for reemployment be denied on the basis that there was no vacancy, is that right?

A. That is right.

Examination by Trial Examiner EICKHOFF:

Q. Then what was the purpose of preparing the list in advance?

A. Because at that time I didn't know how many men actually wanted to stay of the men that were coming in.

1393 Q. If you would have taken them all back, and subsequently determined which ones might have to go out, why had you prepared the list in advance?

A. Well, I knew that I might have to provide jobs for eleven men. I didn't know at that time yet how many would actually stay.

Q. Yes, you have testified you would have taken them all back, and then you would have thought it over and gone into it and made certain recommendations as to who was to be let out, if anybody had to be let out.

A. Right.

Q. Then why did you have this list prepared in advance?

A. Well, because at that time I had definite instructions that I must take care of, at that time I thought it was eleven men. I didn't want to tell all the men they could come back, and later on have to lay them off. In other words, I wanted to find out first how many men did want to stay. I wanted to put these eleven men back on a temporary basis, and whether they would be on permanent or not, would depend on just how many men from the East would want to stay. If they had all left, all the eleven men would have come back and been employed permanently after that.

By Mr. MERRICK:

Q. Mr. Jorgensen, isn't it a fact that the reason why you picked the list of eleven was, as a matter of fair dealing with the men

1394 so as not to have them agree to come back, expecting that every one would come back on the same basis, and be permanently

reemployed, when, as a matter of fact, you would have to let out some of them?

A. Yes; that was the reason why I added that when I said that there would be no strings attached to anybody's coming back; but I had to say something about the eleven, and I couldn't go into detail and explain about it at that time, why it was necessary.

Q. That is, you wanted to have the men know when they did come back there was a possibility that eleven men wouldn't be permanently reemployed?

A. I did. That is why I told Mr. Hatch at that meeting I wanted it thoroughly understood that I was making it known that there would be some men whose reemployment would be contingent on certain conditions.

Examination by Trial Examiner EICKHOFF:

Q. What did you tell the meeting about these eleven men?

A. As far as I can recollect, I told them that they would have to submit their applications for reemployment, and these applications would have to be approved by Mr. Stone.

Q. But the matter had been left entirely in your hands, had it not?

A. It had been left this way: That I would have to
1395 provide for those men, and that is the way I thought best.

I didn't have much time to think out a plan. I merely hit upon this scheme in order to see just how many men would stay. I left it sort of in the air until I found out how many men actually wanted to stay; all eleven might want to stay, and then, none of them might want to stay. Therefore, as I said before, if all the eleven men had gone back—that is, the eleven men that I had to provide for—all the eleven men on the list would have come back.

Q. But why did you tell these men it would be up to Mr. Stone?

A. Because I had had instructions that Mr. Stone had promised the men coming from New York, Chicago, and Los Angeles, if they wanted to remain in the H. B. office then they would be permitted to do so. That is where the original instructions came from.

Q. But it was up to you to eliminate, was it not, any who had to be eliminated?

A. I wouldn't have taken that responsibility. I would have made a careful study of the list and then recommended, through the regular company channels, as to whom I thought ought to go out.

Q. So you think you made it clearly understood at the meeting that these men on the list might come back to work immediately, subject to subsequently being let out?

1396 A. I feel that, because some men there did come back. They didn't seem to think there was anything ambiguous in my statement. They came down at 6 o'clock and were put to work immediately.

Q. Do you know from any conversation with Mr. Hatch, or in any other way, why he didn't go out of his way to notify these men?

A. As I understood it—I heard his testimony—that he thought it might be embrassing for the men there who had to vote, since there were certain conditions attached to the return of certain men.

By Mr. MERRICK:

Q. Mr. Rone has testified—I mean Mr. Bash—that he first heard about this meeting at the Bellevue Hotel between 1 and 1:30 on Tuesday morning. If Mr. Bash had come to the office on Tuesday morning and made application for reemployment, would you have reemployed him?

A. I would have reemployed him under the same conditions as the other eleven men.

Q. Yes; and if he had not come to the office but had telephoned to you and explained that he was unable to come because of sickness, but desired to get his job back, would you have regarded him as having made application for reemployment at that time?

A. I would.

Q. And he would have had his position saved for him?

1397 Mr. EDISES. I object to that question, and to further questions along that line, as hypothetical and going into the question of what he might have done.

Trial Examiner EICKHOFF. I will allow the question.

Mr. MERRICK. Will you read the question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.)

A. Yes, sir.

Examination by Trial Examiner EICKHOFF:

Q. However, it would have been subject to his filing an application and later being confirmed as to his permanent status?

A. Yes; it would have been handled the same way the others were.

Mr. MERRICK. Speak a little louder. I cannot hear you at all.

By Trial Examiner EICKHOFF:

Q. In other words, if these eleven men on the list had been the first to apply for reemployment they would have been put to work?

A. Right.

Q. But if any man had to be let out subsequently, they would be the first to be let out?

A. That is right.

By Mr. MERRICK:

Q. You mean the first to be let out in the event that some of

1398 the people from the outside remained, do you?

A. That is right.

Q. You mean that if subsequent to the strike that none of the eleven remained, that is these from outside, that the men on this list of eleven would be the first ones to have been discharged in case you had to reduce the force?

A. No. That list of eleven wouldn't necessarily have had anything to do with that.

Q. That is, its function would have been fulfilled by that time?

A. That is right.

Q. If these eleven had been the first ones to return, and had gotten in before some of the others, so they didn't all come in at the same time, would the last four men to have applied for reemployment been the ones who would now be out of employment?

A. It wouldn't be necessary—I don't quite understand that question.

Q. If the same as has taken place, four men that came from the East and from Los Angeles had remained, but instead of these four people here, complainants in this proceeding, being the last ones to apply for reemployment, they had been the first, and some other people had been the last four to apply, would the last four to apply be the ones who would now be out of employment, or can't you answer that?

1399 A. I don't get the idea of that question. I don't understand it.

Q. Going back to Mr. Bash, what was the reason why he was not reemployed?

A. There was no vacancy when he filed his application.

Q. That is the sole reason?

A. That is the sole reason; yes, sir.

Examination by Trial Examiner EICKHOFF:

Q. When you say that is the sole reason, are you taking into consideration that there was preference between the men on the list and the men who were not on the list?

A. Well, there was never a necessity for me to determine that. In other words, that would only become important if all the other men had come back.

Q. And if some of the ones who weren't on the list had come back late, when there were no places, what would you have done then?

A. In case some of them had come back late there——

Q. (Interrupting.) To go back to Mr. Merrick's question.

A. That is the one I didn't understand.

Q. Well, if the eleven men who were on the list had applied early and got their jobs, and then after all the positions had been filled, all the vacancies had been filled, four men who were not on

1400 that list applied, let's say at the time that these four applied, what would you have done in that case? Would you have let them out?

A. These eleven men, they were subject to Mr. Stone's approval. I just don't—I just can't say how I would have handled that. I had told them already there was no strings attached to anybody's coming back except these eleven men, and it is hard to say what I would have done. I can't say at this time.

Q. Then there might be another reason except the time of application, might there not?

A. No; I don't see how it could have, because I had already told the men that there were no strings attached to their coming back

Q. You hadn't told these eleven that?

A. No; except those eleven, that they would have to submit their applications for reemployment.

Q. And their coming back was subject to two conditions: one, timely application; and, two, subject to the approval of their applications by Mr. Stone?

A. No; as I see it, there was only one condition, that is, that they would have to file their application for reemployment; that that employment would be temporary until it was finally approved.

By Mr. MERRICK:

Q. I think you testified to some extent about the ratings of
1401 the men that came from New York, Chicago, and Los Angeles.

Will you explain that a little more fully, that is, what positions, under what conditions they had come here, why they were put into the positions in which you did put them?

Mr. EDISES. I ask that Mr. Merrick make that question more specific.

Mr. MERRICK. Let the witness answer.

Trial Examiner EICKHOFF. He may let it stand.

By Mr. MERRICK:

Q. You don't know what I mean?

A. I think what you mean is that they were given certain promises when they came out here.

Q. That is what I am interested in; what were they?

A. Well, they were to remain here permanently if they wished. Some of the men were supposed to have an increase in pay when they stayed here. I think if they wanted to stay here, they were supposed to get a raise, or they were supposed to be raised two classifications; in other words, if a man was a class "C" operator in New York, if he wanted to stay here, he could stay here and get a class "A" job.

Q. Does that mean it would be permanent?

A. If he wished to stay here.

Q. Depending upon whether or not he was satisfactory in the service to you?

A. Yes; of course.

Q. What?

1402 A. Yes.

Q. That is, it wasn't——

A. (Interrupting.) That was what I understood; that is, if a man wasn't satisfactory in the service, I could hardly retain him.

Q. Have these four men been satisfactory?

A. They have.

Q. How do they compare with your other operators?

A. Well, I would say that one of the men coming from New York is as good as anybody in the office.

Q. What have you to say about the others?

A. I say they are as good as anybody there in their classification.

Q. They are not all "A" classification?

A. No; there is one man that isn't—two men that are not "A" classification.

Q. Is there anything peculiar in your opinion about the duties that Mr. McDonough performed while he was here in San Francisco, anything unusual about them?

A. No; I didn't see anything unusual. I didn't have very much contact with him.

Q. What did you say he was doing?

A. He was assigned to commercial work, as I understood it; solicitor.

Q. Had Mr. Rodman ever asked you to let him use other operators for commercial service?

1403 A. Yes; he has.

Q. Can you name any instances?

A. Yes. An operator, Poy, who worked the Shanghai circuit, has gone out on that sort of work. He has been let off at different times because of his being a Chinese, and he has secured some Chinese accounts, I understand.

Another one is Mr. Williams. He has done some commercial work; not very much, though.

Q. And there have been others that you cannot mention?

A. I don't remember right now. May have been.

Q. When they were doing this commercial work were they still carried on your payroll?

A. They were; yes.

Trial Examiner EICKHOFF. Do you know whether there was any vacancy in the commercial department when McDonough was transferred?

The WITNESS. No; I don't know anything about the commercial department.

By Mr. MERRICK:

Q. Don't you know the type of commercial work that Mr. McDonough was used for, what particular type of customers he was supposed to solicit?

A. I understand he was supposed to solicit the offices in the financial district.

Q. Isn't it a fact that Mr. McDonough was assigned to that

1404 work because of the activities of Mr. Phelps in trying to induce the customers to withdraw their patronage?

A. I haven't heard that.

Q. You haven't heard that?

A. No.

Q. Do you know whether Mr. McDonough was the first manager of the San Francisco Stock Exchange office when it was opened a good many years ago?

A. He told me that himself.

Q. That he was?

A. He told me he was.

Q. That is, he had been the fellow who opened the San Francisco Stock Exchange office of the Mackay Radio Company a good many years ago?

Mr. EDISES. I object to that question, Mr. Examiner.

Trial Examiner EICKHOFF. It has been asked and answered. The objection is sustained.

By Mr. MERRICK:

Q. Do you happen to know whether he is a native of San Francisco?

A. Yes; I know that. I don't know whether he is a native of San Francisco, but of California, though.

Q. Do you know whether he had lived here quite a number of years before he had gone East?

A. I think he told me that; I am not sure.

Q. Do you know of any things that he did, other than the solicitation of the telegraph and cable users in the financial
1405 district?

A. Do I know of anything else?

Q. Yes; any other activities for the company.

A. No; I don't know.

Q. Do you know the circumstances under which Mr. McDonough happened to come from New York; that is, whether he was specially selected or volunteered?

A. No; I don't know. I just knew that there was a bunch of men coming out from New York.

Q. You never heard Mr. Rodman or anybody else say?

A. No; I didn't.

Q. Would you explain how you happened to promote Mr. Spanover from Class "C" day shift to Class "B" day shift?

A. Well, when Barlow, operator Barlow, who was class "B" was promoted to class "A," that created a vacancy in class "B." That was put up for bid at the same time——

Q. (Interrupting.) What was Barlow's trick?

A. His trick was from 4 p. m. to midnight.

Q. But you didn't fill that particular vacancy, but just the vacancy in the "B" operators; is that it?

A. Yes; that is right.

Q. Go ahead.

A. So a number of men bid on the job just like they always do, and Spanover got the job on account of his seniority and his ability.

1406 Q. Do you remember what was posted on the bulletin board about that vacancy on which they bid?

A. It was posted in the same manner that all bids are—one vacancy in class "B" at so much a month. And I think at that time I said that there would be no changes in tricks at the time.

Q. Was Spanover—had Spanover been in the employ of the company for a considerable length of time?

A. Yes, he is one of the oldest men in the office.

Q. Is it true, as he testified, that he could have had a "B" position long ago if he had desired it?

A. He could have had an "A" position. When the readjustment was made in 1934, when Mr. Tuel was here, the matter came up for discussion at that time and it was offered to Spanover at that time. He didn't want to take it so he remained as a class "C" operator.

Q. Were any other considerations involved in giving Mr. Spanover this assignment, other than his seniority and his operating ability?

A. No. He was justified in getting that job. He was the logical man to choose.

Q. And this skipping of the night trick was not very unusual?

A. No; that has been done in other cases.

Q. As far as you know, was this promotion of Mr. Span-
1407 over based in any way upon the part he had played in inducing the men to come back to work at the end of the strike?

A. No, it certainly wasn't.

Trial Examiner EICKHOFF. We will take a five minute recess.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. You may proceed, gentlemen.

By Mr. MERRICK:

Q. Mr. Jorgensen, at any time during the strike, or immediately following the strike, did you have any particular hostile feeling toward ARTA?

A. No, I never did.

Q. Did you have any hostile feeling toward any of its officers?

A. No, I hadn't.

Q. Did you have any hostile feeling toward any of the five complainants in this proceeding?

A. No; I have no personal feeling against them.

Examination by Trial Examiner EICKHOFF:

Q. You were irritated by the strike?

A. No, I wasn't irritated.

Q. Well, I think you testified yesterday that you thought it was unfair and unjustified.

A. I think it was.

1408 Q. But that caused no feeling of irritation on your part?

A. No, not toward the men.

Q. Toward ARTA?

A. No, I wouldn't say so. It was a thing that probably couldn't be avoided, and I didn't give very serious thought to it. I tried to do whatever I could during the strike.

By Mr. MERRICK:

Q. Who, in your opinion, at the time I am questioning about, that is, during the strike and immediately after the strike, was responsible for the strike?

A. Well, I don't know really who was responsible for the strike.

Q. You think it was the men or the national officers, or the heads of the local, or what? Did you have an opinion?

A. Well, of course, what I know now, I know that——

Mr. EDISES. (Interrupting.) I object to him testifying as to what he knows now. That has no bearing on the actions at the time.

Trial Examiner EICKHOFF. I don't think it was responsive.

By Mr. MERRICK:

Q. I am only interested, Mr. Jorgensen, in your attitude on October 7, 8, and 9.

A. Well, I called up the men and I found out that most of the men I called on the telephone didn't know there was a strike called,
1409 and I naturally thought there was something wrong somewhere. It couldn't be all in accordance with the wishes of the men. I didn't give it a great deal of thought, but I thought that was rather peculiar.

Q. When you said that you thought the strike was unfair, what did you mean by that?

A. Well, I didn't see how the men could have any kick coming. I know that, in so far as their treatment was concerned by the company, that they had always been treated fairly. I had worked for the company since 1924, and I had never had any cause to complain in any way.

Q. Do you remember the incident of Mr. Spanover leaving the operating room to go and get the copy of the round robin?

A. I do.

Q. Can you recall any other instances when you have permitted a man to leave the operating room for some purpose, without docking him?

A. That is very frequently done. I am very liberal in this respect. If a man has some——

Q. (Interrupting.) For what other purposes, if you recall, have you permitted men to leave the room?

A. Some personal things, many kinds of things. A man might want to go and get a tooth pulled, or he may have some personal business to attend to for a couple of hours. I have very frequently let them off.

Q. And you don't dock them for that?

1410 A. No; I don't.

Q. I didn't hear you.

A. No, I don't; provided I can let them go at the time; I always try to.

Q. That is, if they ask your permission and you are able to keep the circuits functioning properly without them, you let them go?

A. If it doesn't interfere with traffic; yes, I do.

Q. Did you attend the meeting in the clock room on the sixth floor of the Postal Telegraph Building at 22 Battery Street, mentioned here?

A. I was requested to come downstairs for a few minutes, which I did, while the meeting was on.

Q. Who asked you to go there?

A. I think it was Operator Poy that came up to ask me if I wouldn't come down; that they wanted to ask me some questions.

Q. That is, he came up during the meeting and asked you?

A. Yes.

Q. Had it been prearranged that you would go to the meeting?

A. Not that I know of. I was very much surprised to get the request.

Q. What did he say to you when he asked you to come down?

A. Merely said that they wanted me to answer a couple of
1411 questions.

Q. You went down?

A. I did.

Q. What questions did they ask you?

A. As far as I remember, I was asked this: If, in the future, anybody should make any errors, or anything of that kind, I would hold that against them in reference to the strike; that is, if I would remember the strike and then use that as an excuse to discharge the men.

Q. What did you say?

A. I told them, of course, I wouldn't; that in so far as I was concerned I had forgotten all about the strike.

Q. Any other questions asked you?

A. I think that Mr. Patterson was there, who is one of the men on the list of eleven, and he asked me personally about his own status. And I told him at that time that I didn't quite remember whether he had been reinstated or not at that time. I think he had. I told him that his status was just as clear as any of the others, as far as I was concerned.

Q. Was anything said about when the men from New York, Chicago, and Los Angeles were going to return?

A. No; I don't remember that there was; I don't remember.

Q. You don't recall any other questions being put to you?

1412 A. No. I was only there for, I would say, three or four minutes.

Q. And as soon as the questions that had been put to you had been answered, did you leave?

A. I did. I returned to the operating room.

Q. Do you recognize that?

A. [Examining application.] Yes; I do.

Q. What is it?

A. That is the application of Mr. Rone, signed about 3:30 on October 9th, for reemployment.

Q. Is this your signature?

A. It is.

Q. Do you recognize that?

A. [Examining inter-office memorandum.] Yes; I have seen that

Q. Is that Captain Dodd's signature?

A. It is.

Trial Examiner EICKHOFF. Do you have some little descriptive matter about it?

Mr. MERRICK. I am offering it in evidence.

By Mr. MERRICK:

Q. This is the third sheet. Do you recognize that?

A. [Examining inter-office communication.] I do.

Q. Those are——

1413 A. (Interrupting.) Mr. Rodman's and Mr. Stone's initials.

Q. Initials in their own handwriting?

A. That is right.

Mr. MERRICK. I offer them in evidence.

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. The three sheets may be admitted as Respondent's Exhibit No. 11.

(The three sheets referred to were received in evidence and marked "Respondent's Exhibit No. 11, Witness Jorgensen.")

By Mr. MERRICK:

Q. Is the time stated on Mr. Rone's application, namely, 3:37 p. m., October 9th, correct?

A. It is right.

Q. And did Mr. Rone state to you that that was the correct time at which he first made his verbal application?

A. No; he didn't state that, but I wrote it out on the application myself. I looked at the clock when I wrote it out, so I know that is the time.

Q. This time, 3:37 p. m., October 9th, was on there at the time Mr. Rone signed it?

A. That is right.

Q. I show you Board's Exhibit No. 4. Is that your signature on the second sheet?

A. [Examining sheet referred to.] It is.

Q. In Mr. Palmer's application it is stated: "confirming

1414 my verbal application to you about 9 p. m., October 8th." Is that the time at which Mr. Palmer first applied for reemployment?

A. Yes, sir.

Q. Was that time in this application at the time Mr. Palmer signed it?

A. It was.

Q. Can you identify the third sheet of that exhibit?

A. [Examining sheet referred to.] Yes.

Q. Are those Mr. Rodman's and Mr. Stone's initials?

A. Mr. Rodman's and Mr. Stone's initials; yes, sir.

Q. In their own handwriting?

A. Yes.

Mr. MERRICK. Is that sufficient identification, Mr. Examiner? You admitted these earlier applications subject to proof as to the balance of the sheets.

Trial Examiner EICKHOFF. I think so; yes.

Mr. MERRICK. I am going through the others.

By Mr. MERRICK:

Q. I show you Board's Exhibit No. 6, application of Mr. Bash. Is that your signature on the second page?

A. [Examining sheet referred to.] It is.

Q. Do you know that the time stated in that application, namely, 10:30 a. m., October 9th, is correct?

A. That is right.

1415 Q. Was that time inserted in the application at the time Mr. Bash signed it?

A. Yes. It was all written out at the same time.

Q. Can you identify the signatures on the third page of the application, that is, of the exhibit?

A. (Examining page referred to.) Yes, Mr. Rodman's and Mr. Stone's initials.

Q. In their own handwriting?

A. In their own handwriting, yes.

Mr. MERRICK. Are you going to make a note, Mr. Examiner, that the condition under which they were admitted has been met as we go through them?

Trial Examiner EICKHOFF. I will make one statement with respect to all of them.

By Mr. MERRICK:

Q. I show you Board's Exhibit No. 3—wait a minute—Respondent's Exhibit No. 3. Is that your signature on the memorandum headed "To Captain E. H. Dodd, from A. C. Jorgensen"?

A. [Examining memorandum.] Yes.

Q. Is the time correct as stated in Mr. Loudermilk's application, namely, 9:00 p. m., October 8th?

A. That is right, correct.

Q. Did that time appear in the application at the time Mr. Loudermilk signed it?

A. Yes, sir.

1416 Q. Can you identify the signature on the memorandum headed "To Mr. H. L. Rodman, from E. H. Dodd"?

A. [Examining memorandum.] Captain Dodd's signature, yes.

Q. And can you identify these signatures on the first page of the exhibit?

A. Mr. Rodman's and Mr. Stone's initials.

Q. In their own handwriting?

A. Yes, in their own handwriting.

Q. At the time these four men signed these applications did they in any way question the time that appeared on the applications?

A. No.

Q. I show you Respondent's Exhibit No. 7, the second sheet. Can you identify the initials that appear there?

A. [Examining sheet.] Mr. Rodman's and Mr. Stone's.

Q. In their own handwriting?

A. Yes, in their own handwriting.

Q. Do you know at what time the last vacancy in the H. B. operating room was filled after the termination of the strike?

A. Yes, sir; I found out later it was filled at 4 o'clock in the afternoon of October 8th.

Q. And at that time the complement of the H. B. staff was complete so far as was necessary to fill it?

A. That is right.

1417 Q. And there were the same number of employes then in the office that there had been prior to the calling of the strike?

A. Yes. I wasn't at the office at the time, but Captain Dodd was acting for me while I was home asleep, with the assistance of Supervisor Buckley, and I found out later that at 4 o'clock 68 men had returned to work.

Examination by Trial Examiner EICKHOFF:

Q. I think you testified a little earlier that if all of the men had come back to work right after the Bellevue meeting, you would have put them all to work, even though the office might have been overstaffed?

A. Yes, sir.

Q. Now, when did you decide you would not overstaff the office?

A. I didn't have anything to do with that, Mr. Examiner. I was home at that time and they were all finished; and, as I said, Captain Dodd at that time was acting for me. I didn't decide that. Captain Dodd informed me that there were no more vacancies.

Q. So the procedure which was followed was different from the one which you would have followed?

A. I couldn't say. I never had to decide.

Q. Well, you were telling me awhile ago what you would have done. You said if they had come back right after the

1418 Bellevue meeting you would have put them to work?

A. Yes.

Q. Now, had you been there that night, say, would you have put the men to work even though that would have overtaffed the office?

A. Well, I can hardly answer that question. The situation never arose. I don't know.

Q. Neither did this other and you answered that.

A. Which one?

Q. Mr. MERRICK. If the Examiner will permit, I don't think the phrasing of your question was so he quite understood it.

By Mr. MERRICK:

Q. Do you mean, Mr. Jorgensen, if they had all come back the morning of Tuesday, October 8th, you would have put them to work, thus having an overstaffed condition, that it would have remained overstaffed?

A. Well, it wouldn't have been overstaffed if the eleven men had come right back to work, because all the men hadn't come back yet. They were treking in all during the day.

Q. This is the situation I think the Examiner is asking about: You had four men that did remain, didn't you?

A. Yes.

Q. So that if all of the men, including the four of these complainants that were H. B. employes, had come back simultaneously on Tuesday morning, you would then have on your staff
1419 four more than necessary; is that right?

A. That is right.

Q. How long would that condition have remained? How long would you have allowed your staff to remain overstaffed?

A. I would have had to make a study of that. That is the time I would have had to look over the list of eleven and select four men that I would recommend through company channels, as to who should be out.

Q. And you would have selected the four from this list of eleven?

A. Yes; I would. But I cannot say as to what four men it would have been in that case. I wouldn't even say whether it would have been the four men here now; I don't know.

Examination by Trial Examiner EICKHOFF:

Q. Later on you declined to put some or all of these four men to work because you were then completely staffed?

A. Well, that was in the evening when I had been home and came back and I was informed that all the vacancies had been filled. Captain Dodd handled that more or less. I wasn't familiar with the set-up. I had been home all day and I came down just for a couple of hours.

Q. Was there any change in attitude then?

A. No; there was no change in attitude.

Q. But you would have taken these men had they applied
1420 right after the Bellevue meeting, even though it might have overstaffed the office?

A. Yes.

Q. But later on you would not take them and overstaff the office?

A. Well, at that time I was informed—I knew then there were no vacancies. We had all the men that we needed.

Q. But you said, regardless of the question of vacancies, you would have taken all the men back.

A. At that time in the morning.

Q. Yes. When did the time element become important, or the question of whether or not there was a vacancy become determinative?

A. Of the eleven men on the list, they had all returned except those four men. So at that time of the night we found out there would be only four men that would want to stay, so I didn't have to choose four men because four men hadn't re-applied yet.

Q. If you were willing to overstaff the office in the morning, why weren't you willing to overstaff it at night?

A. It never occurred to me.

Mr. MERRICK. I know what the Examiner is driving at.

By Mr. MERRICK:

Q. Mr. Jorgensen, were you, in the morning of October 8th, willing to knowingly overstaff your office?

1421 A. I didn't know in the morning it would be overstaffed, because I didn't, at that time, know how many wanted to remain.

Q. And the only reason you weren't willing to overstaff it in the evening was because then, for the first time, you knew what particular men were not to be reemployed because they were the last four to apply for reemployment; is that right?

A. I knew there were four men that wanted to stay, by that time, and, as it happened, there were four men that hadn't been reemployed, so that just left the staff as it was before, and the other men could be reinstated.

Q. And you would have overstaffed your office in the morning simply because at that time you didn't know whether or not you would have to make a selection from those who applied simultaneously?

A. Yes. If the eleven men had come back at 6 o'clock, there wouldn't have been any overstaffing, because they were not all there at that time.

Examination by Trial Examiner EICKHOFF:

Q. You told me you would take them all back.

A. I would at that time.

Q. And then you would take applications from some of them and put the question up to Mr. Stone as to who would be left

1422 out, if anybody?

A. Yes.

Q. You weren't willing to follow that procedure a little bit later?

A. Well, I was relieved at that time of the responsibility of doing my picking, because there was a full staff, and I knew four men were to remain, and four men hadn't put in their applications yet.

Q. I still can't square your testimony, because you said in the morning you would have voluntarily overstaffed the office, and then submitted the question to Mr. Stone to see who would be dropped.

A. Yes.

Q. Later you weren't going to do that.

A. Well, the situation had changed at that time. It is a hard thing to explain. I just said that at that time I absolutely and positively knew that there were four men that wanted to stay. In the morning it might have been eleven, I don't know—didn't know at that time.

By Mr. MERRICK:

Q. It is true, then, Mr. Jorgensen, that the list of eleven would have been used by you in determining what men to put back only in case they came back simultaneously, so that you would have to decide on some basis or other, other than the order in which they applied for reemployment, which men to take back?

1423 A. That is right.

Q. But since the men did not come back simultaneously, you used the order of their application as the basis for reemployment, and not whether or not they were on the list; is that right?

A. That is what I tried to explain. Maybe I didn't put it over.

Mr. MERRICK. That is what I understand. Does it clear up the situation? It seems clear to me. Is that clear to you, Mr. Examiner?

Examination by Trial Examiner EICKHOFF:

Q. In the morning you were going to submit the question of this list to Mr. Stone. In other words, you weren't going to be the one to decide who was going to be let out. But in the evening, or the next day, you weren't then willing to take them on temporarily and wait action by Mr. Stone to see whether they, or some one else, would be dropped?

A. No; because the situation was changed in the evening. That is the whole thing.

Q. I am trying to get at what the change was.

A. The change was——

Q. (Interrupting.) I understand the factual change, what it was, but you told me in your testimony that you would have taken

1424 everybody back in the morning, no matter whether it would overstaff the office or not, and then you would leave it up to Mr. Stone as to who was to be let out.

A. I would make my recommendation.

Q. Yes; you would make your recommendation.

A. Yes.

Q. Now, if you were willing to overstaff your office in the morning, why weren't you willing to do it that night and the next day?

A. The only explanation I can give is the fact that at that time I knew there were only four men that wanted to remain, and that the four men hadn't reapplied.

Q. So you were no longer willing to take them on temporarily?

A. No. I couldn't see why it was necessary to do that.

By Mr. MERRICK:

A. Is it true that the only reason you would have been willing to take them on temporarily in the morning was so as to give you time to select which men would not be taken back and would be regarded as having been replaced by the men from the East and Los Angeles and remained?

A. Well, that is right. I couldn't make the decision before I found how many men actually wanted to remain.

Q. But when, by evening, you knew four men were going to stay and there were four men who still hadn't applied for reemployment, there was no need of taking anybody back temporarily?

1425 A. That is the way I looked at it at the time.

Trial Examiner EICKHOFF. That is the first time that the time element came into it, then?

The WITNESS. Yes; it was changed then. I couldn't see any other way.

By Mr. MERRICK:

Q. Do you remember having a conversation with Mr. Rone on Wednesday afternoon, October 9th, about 3:30 in the afternoon?

A. Well, Mr. Rone came up to apply for a job at that time. It wasn't much of a conversation.

Q. What do you remember as to what was said?

A. Well, I remember that Mr. Rone came in and offered his congratulations. I didn't know just what he meant. He explained about the strike. I didn't follow that up.

Q. Speak louder, please.

A. I didn't follow that up. I asked him why he hadn't come in before then. I wanted him to submit an application for reemployment. He asked me why it was necessary, and said, "I haven't been fired, have I?"

I said, "No; you haven't been fired."

Then he wanted to know why it was necessary to submit an application. I told him, "Well, everybody else had to do it," and that they all walked out, and there was no reason why he shouldn't submit an application.

And Mr. Rone expressed the desire to do so, and I wrote
1426 out his application and he signed it.

Q. Do you remember Mr. Rone saying to you, "Well, I am not out, am I?" And you saying, "No; you are not out."

A. I don't remember just those words, but he asked me if he was fired, and I said, "No; you are not fired." That means the same thing.

Q. And that is the time when he did make out his application?

A. That is right.

Q. Do you remember before the meeting in the Bellevue Hotel, before the vote was taken, being in one of the rooms there with Mr. Hatch, Mr. McLaughlin, and Mr. Burtz and some others?

A. I remember after I came back to the hotel about 2 o'clock or so there were a great many people around there.

Q. You heard, I think, Mr. Loudermilk's testimony about a conversation he overheard inside the room at the Bellevue Hotel somewhere around 2 o'clock?

A. Yes.

Q. Were you there in that room?

A. Yes.

Q. What were you doing there?

A. Well, I had come back, waiting for the men to come in.

Q. Do you remember any particular conversation that you had with the men that were there?

1427 A. No; I didn't have very much to say to anybody. I remember calling up the police.

Q. Do you remember using the expression, "If they get tough, we will get tough"?

A. Yes. I forgot about that until I heard Mr. Loudermilk mention it. It was, I believe, in response to some of the same conversa-

tion that prompted me to call the police. They were afraid that maybe somebody might get tough.

Q. Had you any reason to believe that they might get tough?

A. Well, I had heard a great deal about different things during the strike. I was aware that there might be some violence.

Q. Had you heard about their sending thugs down to the airfield?

A. Well——

Mr. EDISES. I object to that as assuming something not in evidence, namely, that thugs were sent down to the airfield.

Trial Examiner EICKHOFF. Some reference was made to a rumor, rather than a fact, wasn't it?

Mr. MERRICK. Yes.

Mr. EDISES. He didn't state his question that way.

By Mr. MERRICK:

Q. Had you heard that there had been talk about sending thugs down to the airfield?

1428 A. Yes; I heard about that.

Q. And you understood that from the rumor these thugs were going down there, or had been sent down there by men on strike who were strongly in sympathy in the strike?

Mr. EDISES. I object to any question which is based on his interpretation of a rumor. Certainly that is not a very sound basis for a question.

Trial Examiner EICKHOFF. I think this particular line has gone far enough. You have developed that the witness had some cause to fear for the safety of the group, and himself.

Mr. MERRICK. I wanted to show it was somewhat substantial because——

Trial Examiner EICKHOFF. That wouldn't be particularly substantial. If, in his mind, he felt there was some danger, that is enough.

By Mr. MERRICK:

Q. From what source did you think the danger of the men being interfered with would come?

A. I didn't have any particular thought about that. I just thought if there was going to be violence, as there is sometimes during a strike, the men should have protection.

Q. You say you meant to protect them from themselves, or protect them from somebody else?

A. Well, I didn't give it a great deal of thought, whether it would be from within their own ranks or from the longshoremen that were mentioned.

1429 Q. At this time did you have knowledge of any particular incident that had taken place during the strike, that caused you to think police protection was advisable?

A. Yes. I knew that when the supervisors went out on Sunday they were quite upset. They had been told, that is, they told me they had been intimidated and threatened in various ways. And then one evening, I don't remember, but I think it was Saturday or

Sunday, there was a young girl that work'd in the office who had been stopped and was not permitted to enter the building.

Q. Was she prevented by the use of force from entering the building?

A. I don't know.

Trial Examiner EICKHOFF. Do you know anything about it except by hearsay?

The WITNESS. I was in the office when, I think, Mr. Dewey had the conversation with Miss McKenna, and she was quite upset because she couldn't get in there.

By Mr. MERRICK:

Q. What did Mr. Dewey say to you at that time?

A. I don't remember his saying anything to me. Everybody was quite upset about it at the office at that time.

Q. Did you customarily make appointments to have breakfast with Mr. Hatch?

A. No. I didn't make appointments with anybody for breakfast.

1430 Q. Is it true that you frequently did breakfast with him?

Trial Examiner EICKHOFF. I think we have gone into that very fully.

By Mr. MERRICK:

Q. Have you been reimbursed by the company for the $1.50 that you paid Mr. Hatch?

A. No, I don't remember ever having applied for it. I tried to think of it here lately, since it came up, but I dug down in my pocket and gave him the $1.50, and I don't think I have ever gotten it back.

Trial Examiner EICKHOFF. Did you agree to pay for the rent for the room at the Bellevue?

The WITNESS. Yes, sir.

By Mr. MERRICK:

Q. By that do you mean that you agreed personally to pay for it, or the company?

A. I didn't give it any thought at the time. I didn't think it was important. My thought was the fellows had been out on strike and losing time, and there was no reason why they should pay for it.

Q. Do you know how much the charge was for the room?

A. No, I don't.

Trial Examiner EICKHOFF. Who did you expect to pay for the room?

The WITNESS. I didn't give it any thought. I signed the register and told them to charge it; that is all.

1431 By Mr. MERRICK:

Q. Here is the bill. Have you ever seen the bill before?

Mr. EDISES. May I see it, Mr. Merrick?

Mr. MERRICK. Surely.

(Counsel Merrick handed counsel Edises bill for the Hotel roo in question.)

Mr. MERRICK. It is for $5.85. Is there any objection to its bein offered in evidence?

Mr. EDISES. No, glad to have it.

The WITNESS. I haven't seen it.

Mr. MERRICK. I offer the bill in evidence, for the Hotel Bellevu room.

Trial Examiner EICKHOFF. It may be admitted as Respondent' Exhibit No. 12.

(The bill referred to was received in evidence and marked "Re spondent's Exhibit No. 12, Witness Jorgensen.")

Examination by Trial Examiner EICKHOFF:

Q. Is there any question about the payment of this bill?

A. I don't know. I haven't seen it. It was in an envelope on m desk this morning, from the Bellevue Hotel, and I had a suspicio what it was and I turned it over to Captain Dodd.

Q. Is this the first time you received a bill?

A. Yes, the first time I received a bill. I never saw i

1432 before.

Q. The first time the hotel has ever billed you for the rent of those rooms?

A. Yes. I heard about it before I came up here, and that thing was on my desk this morning and I turned it over to Captain Dodd without opening it.

Q. Why did you turn it over to him?

A. I knew what it was. I turned it over to him and let him worry about it. I didn't want to have anything to do with it.

Mr. MERRICK. I think that the reason why it was turned over to Captain Dodd may appear from the envelope, if you want to have this put in evidence too. (Counsel Merrick exhibited the envelope in question to Trial Examiner Eickhoff.)

Mr. MERRICK. Mr. Reporter, put that envelope in as part of the exhibit, Exhibit 12.

By Mr. MERRICK:

Q. Mr. Jorgensen, you said that Tuesday you went home. What time in the morning was that?

A. About 10:30, I think, or 10:45.

Q. Was there any special reason why you left at that time?

A. I wanted some sleep very bad.

Q. How long had you been without sleep at that time?

Mr. EDISES. What is the bearing of this question?

1433 Mr. MERRICK. I think that it is admissible to show that Mr. Jorgensen was under considerable strain at this time, and that some of his actions, which may not sound perfectly reasonable, should be considered in the light of his condition at the time.

Trial Examiner EICKHOFF. I will allow it.

Mr. MERRICK. You allow it?

Trial Examiner EICKHOFF. Yes.

A. I got up Monday morning at 6 a. m. That is the last time I was in bed.

By Mr. MERRICK:

Q. You hadn't been in bed since Sunday night?

A. No.

Q. Were you up most of the night of October 4th to 5th?

A. I was up all night.

Q. Had any member of your family been involved in any accident that time?

Mr. EDISES. I object to that line of questioning. I don't see what difference that would make.

Trial Examiner EICKHOFF. If it doesn't make any difference, I will allow it.

A. Yes.

By Mr. MERRICK:

Q. Briefly state what it was.

A. My wife was in an automobile accident.

Q. When was that?

1434 A. That was Sunday evening. I was about to go home and get some sleep and I got the call and went over to Livermore, where it happened.

Q. Speak louder, slower, and more distinctly.

A. I was about to go home to get some sleep when I got the telephone call from the Livermore Hospital, and I went over there and stayed over night and brought her back Monday afternoon. I got a doctor and a nurse, and then I went right back to the office.

Mr. MERRICK. That is all.

Mr. EDISES. Mr. Examiner, my redirect examination will take at least an hour, and unless you feel we ought to stay that long today, I don't see that it would be worth while to commence my examination at this time.

Trial Examiner EICKHOFF. No, I do not want to stay an hour today unless there is some extra good reason for it. In that case, unless Mr. Merrick has something to urge, we will adjourn until Monday morning at 10 o'clock.

Mr. MERRICK. I would like at this time to ask the attorney for the Board whether or not he desires me to have any further witnesses here Monday.

Mr. EDISES. No, I don't think I will ask you to get in touch with any witnesses for me who are at present employed by Mackay.

1435 Mr. MERRICK. Are you going to call any further witnesses?

Mr. EDISES. I think that everything that I want to develop on my affirmative case at this time can be brought out through Mr. Jorgensen.

Mr. MERRICK. I would like, if possible, to get some indication as to when you intend to close your case.

Mr. EDISES. At the present time it is my belief that I will close my case with Mr. Jorgensen, in view of the fact that Mr. Dewey is ill and not available. It is possible that I may recall one of my former witnesses for just a few minutes.

Mr. MERRICK. You anticipate your case will be concluded by 11 or 11:30 Monday morning?

Mr. EDISES. Well, I would hesitate to say, but the probability is that it will be completed Monday morning.

Trial Examiner EICKHOFF. However, if you are not prepared at that time to go on with your case, Mr. Merrick, we can recess until 2 o'clock.

Mr. EDISES. Mr. Merrick, you said something which indicated that you might not have any other witnesses than have been called. Is that your present intention?

Mr. MERRICK. That is why I would like a little time to think about it. That is why I am interested in to know when it would be necessary for me to make a decision.

1436 Trial Examiner EICKHOFF. If you are not ready when the Board rests, you will be given reasonable opportunity.

Mr. MERRICK. Thank you.

Trial Examiner EICKHOFF. We will adjourn until 10 o'clock Monday, December 16, 1935.

(Thereupon, at 12 o'clock noon, the hearing in the above entitled cause was adjourned until Monday, December 16, 1935, at 10 o'clock a. m.)

1437 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Monday, December 16, 1935.

Met pursuant to adjournment at 10:00 o'clock a. m.

Present: Same as before.

PROCEEDINGS

Trial Examiner EICKHOFF. Are you ready to proceed, gentlemen?

Mr. EDISES. Yes; Mr. Examiner.

Mr. MERRICK. Yes. I would like to ask Mr. Jorgensen a few questions before redirect.

Mr. EDISES. Yes; surely.

1438 ANDREW JORGENSEN, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Cross examination by Mr. MERRICK:

Q. Mr. Jorgensen, did you, while you were traffic—what do you call it—chief operator, or traffic manager, at any time keep a list of the members of ARTA?

A. The only list I have is the one that was given to me by Mr. Salisbury. I think it was last March. I kept that in my files, but

I believe, as I told you previously, that I never looked at it. I never paid much attention to it, as to who are members and who are not.

Q. Did you pay any attention to whether they were or were not members?

A. No; I didn't.

Q. Did you ever at any time discriminate in any way against those employees who were members of ARTA?

A. No, sir.

Q. At any time previous to the strike or during the strike, or subsequent to the strike, have you taken any action for the purpose of interfering with the right of the employees to select representatives of their own choosing?

A. No; I haven't.

Q. Have you done anything for the purpose of interfering
1439 with, encouraging, or discouraging membership in the union?

A. No; I haven't. I have been asked several times in the past by men if their joining the union would make any difference as far as the company was concerned, and I invariably told them that was for them to decide; that I wouldn't advise them one way or the other, and I won't.

Q. Did their activity in connection with the union, or in connection with the strike, have anything to do with the placing of the names of any of these men on that list of eleven?

A. No.

Mr. MERRICK. That is all.

Redirect examination by Mr. EDISES:

Q. How long have the various classifications of operators been in existence at the Mackay office in San Francisco?

A. This last——

Mr. MERRICK. (Interrupting.) That has all been gone into. Is it necessary? There is no dispute about it.

Trial Examiner EICKHOFF. I will allow this question.

A. The last classifications were started on July 1, 1934; previous to that we had classifications, different kind, A, B, and C only.

By Mr. EDISES:

Q. Have you at any time since the classifications, A, B, and
1440 C, since they have been in effect, laid off four Class A operators at one time, prior to this last time?

Mr. MERRICK. I object to this question. There is no evidence here that he has laid off any four Class A operators.

Trial Examiner EICKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. The last part of the question is objectionable.

Mr. EDISES. I am willing that the words "prior to this last time," may go out.

By Mr. EDISES:

Q. Will you now answer the question?

Mr. MERRICK. You had better re-read it.

Trial Examiner EICKHOFF. Restate it; that will be the quickest way.

By Mr. EDISES:

Q. Have you ever laid off four Class A operators at one time, prior to October 4, 1935?

A. I never laid off four operators at any time, of any class.

Q. Have you at any time since you have been chief operator, laid off three Class A operators at once?

A. I don't believe I have ever laid three off at any time, of any class.

1441 Q. Have you ever laid off two Class A operators at one time?

A. Not that I remember of.

Q. Isn't it a fact, Mr. Jorgensen, that during the entire period that you have been chief operator at the H. B. office, you have never, prior to the recent strike, laid off a Class A operator?

Mr. MERRICK. I object to that part, "prior to the recent strike."

Trial Examiner EICKHOFF. Overruled.

A. I don't remember. I would have to look at my records. That is a pretty long time to remember.

By Mr. EDISES:

Q. Well, it is a fact that you can't remember ever having laid off a Class A operator, isn't that correct?

A. I can't remember right now; no.

Q. Haven't you a pretty good recollection of the men that you have laid off—How many men have you laid off since you have been chief operator at the H. B. office?

A. I couldn't say.

Q. Well, is it more than ten?

A. It might be. I wouldn't say without consulting my records. There are quite—there is quite a turnover there at all times.

Q. Mr. Jorgensen, you know very well that you haven't laid off a Class A operator, isn't that a fact?

1442 Mr. MERRICK. I object to that. That has nothing to do with the issues whether he did or did not lay off any, and how many were laid off is not involved.

Trial Examiner EICKHOFF. I think you have gone as far as you can with that, Mr. Edises.

Mr. EDISES. The witness' memory fails him at most extraordinary times.

Mr. MERRICK. I object to that comment. It is wholly unnecessary.

By Mr. EDISES:

Q. Mr. Jorgensen, you testified that when a man makes an error which is reported, that man is informed of it and given an opportunity to explain, is that not correct?

A. Correct.

Q. And you have also stated that if he is discharged for inefficiency he is shown his error record and told why he is being discharged, isn't that correct?

A. I didn't say he was shown his error record when he was laid off. If he is discharged because of errors he is told that; yes.

Q. And when he is discharged for inefficiency he is likewise told, is he not?

A. Yes.

Q. And you did that in the recent case of Mr. Chambers, didn't you?

1443 A. Yes.

Q. You told him why he was being discharged?

A. Yes.

Q. Isn't it a fact that you have never told any of these five men why they were discharged?

Mr. MERRICK. I object. There is no evidence of any discharge, except the argumentative one that you make from the circumstances.

By Mr. EDISES:

Q. I will rephrase that question—refused to be re-employed or taken back. Isn't it a fact that you never told these men the reason they were not taken back was because of their inefficiency?

Mr. MERRICK. I do not think the question is clear, Mr. Examiner.

Trial Examiner EICKHOFF. Do you want to stand on that question, or put a new one?

Mr. EDISES. I think the question is clear.

Trial Examiner EICKHOFF. Will you read the question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. I don't think the question is clear. You had better reframe it.

By Mr. EDISES:

Q. Isn't it a fact that you have never told these men that
1444 your refusal to take them back was based on their inefficiency or general undesirability to the company, and that you have told them at all times that the sole reason why they were put on the list and not taken back was because they didn't show up in time?

Mr. MERRICK. That is a very confused question, Mr. Examiner. The reason why they were put on the list was because they didn't show up on time—that can't have anything to do with it.

Trial Examiner EICKHOFF. Can you answer that question?

The WITNESS. It doesn't seem to be referring to the list there. I can say that the only reason I have given them was that there was no vacancy when they showed up for duty.

By Mr. EDISES:

Q. And you never told them that they were inefficient, have you?

A. Inefficient?

Q. Yes.

A. No; I wouldn't say that they were inefficient.

Q. And you never told them that they were, for various reasons, undesirable for the company?

A. Not in this connection.

Q. Isn't it a fact that the failure to take these men back, you have never at any time told them that their services were in any way unsatisfactory to the company?

Mr. MERRICK. I object to what has happened subsequent to
1445 the time of their employment; that is, to the time they were denied re-employment. That has no bearing on the reason at that time.

Trial Examiner EICKHOFF. Overruled.

A. I haven't seen these men very much after that.

By Mr. EDISES:

Q. You have had an opportunity to see them, have you not?

A. Yes; but I didn't discuss the matter one way or another.

Q. Isn't it a fact you have seen those four men since the strike?

A. Yes.

Q. Several times?

A. I have seen them several times.

Q. Isn't it a fact that you have spoken to them about the failure of the company to take them back?

A. They have asked me several times; they have come around and asked me——

Q. (Interrupting.) Isn't it a fact that you have never told——

Mr. MERRICK. (Interrupting.) Let him finish his answer.

By Mr. EDISES:

Q. Finish your answer.

A. They came around several times and asked me if their application had been acted on. I told them——

Q. (Interrupting.) And you have never told them at any time that there was any other reason for their not being given their jobs back other than the fact that they hadn't shown
1446 up in time; isn't that true?

A. I told them there was no vacancy. That is the only reason I told them.

Trial Examiner EICKHOFF. Did you give these men any explanation of their being put on this list?

The WITNESS. No; I never discussed that with them.

By Mr. EDISES:

Q. Mr. Jorgensen, you have testified that you knew that Mr. Hatch didn't go out of his way to get in touch with the men on the list. Now, suppose that none of those men had heard of the meeting. Isn't it true, then, that they would not have had a chance to re-apply for work until after their jobs had been filled?

Mr. MERRICK. That is purely argumentative, Mr. Examiner.

Trial Examiner EICKHOFF. I think so.

By Mr. EDISES:

Q. Isn't it a fact, Mr. Jorgensen, that at least three of those men were not present at the meeting?

Mr. MERRICK. That is in evidence. I don't see the need of questioning him about that.

Trial Examiner EICKHOFF. I will allow him to ask the witness that question.

Mr. MERRICK. If he knows just who was present at the meeting. There is no evidence to show who was.

Trial Examiner EICKHOFF. He may know.

By Mr. EDISES:

Q. Will you answer the question?

Mr. MERRICK. There is no conflict as to who was there.

1447 A. Yes; I think there were three that weren't there.

By Mr. EDISES:

Q. Well, isn't it true, then, that those three men could not have known of the fact that the other men were going back to work at 6 a. m.?

Mr. MERRICK. I object.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. You have stated that the reason that the eleven men were discriminated against in a certain way, namely, about being put on the list and being told that they could only be taken back under certain special circumstances——

Mr. MERRICK. I object to that. It is not a proper characterization of the evidence.

By Mr. EDISES:

Q. Was in order——

Trial Examiner EICKHOFF. I think your question so far is objectionable.

By Mr. EDISES:

Q. You have stated that the reason why you named this list of eleven men was because you had to take care of certain men who were coming from Los Angeles and from the east; is that correct?

A. That is right.

Q. Well, why was it necessary, Mr. Jorgensen, if all that you had to state at the meeting at the Bellevue was that certain men would probably not be taken back, why was it necessary to have to name eleven specific names?

1448 Mr. MERRICK. I object to the question.

Trial Examiner EICKHOFF. Overruled.

Mr. MERRICK. Mr. Examiner, he said, why was it, if he were not going to take back certain men, he had to name eleven men. That is not a proper summary of any evidence here put in by any witness that he had not intended to take back certain men.

Trial Examiner EICKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. I think the question is objectionable. It contains one or more assumptions. You might ask the witness why he did it.

By Mr. EDISES:

Q. Why couldn't you have stated to the men at the Bellevue that certain men, who would be definitely ascertained later, might not be able to come back permanently? Why was it necessary for you at that time to give the names of eleven specific men?

A. It was left up to me, and that is the way I did it, and that was the way that it occurred to me. I can't say why something else didn't occur to me. That is the way it occurred to me.

Q. Why did you have to mention those names at all? Why couldn't you have just taken them back and then decide later as to what men were going to be let out?

1449 A. I could have done that if I had thought of it that way.

Q. But you didn't?

A. I didn't.

Q. You stated that up to a certain time all of the men would have been put back to work if they had shown up, even though temporarily, is that correct?

A. That is right.

Q. Now, at what time did this time element come into effect, namely, at what time of the day or night did you change your position in that respect?

Mr. MERRICK. If he changed his position.

A. Well, I think that the same question was asked by the Examiner Saturday and I would like to make my position perfectly clear here.

I left the office at between 10:30 and 11:00 a. m., I think, and I went home to get some rest. I don't know what went on in the office during my absence, except what I heard afterward. Captain Dodd was acting in my behalf while I was away, with the assistance of Mr. Buckley. When I returned to the office for a couple of hours in the evening——

By Mr. EDISES:

Q. What time was that?

A. I imagine about 7 o'clock—Captain Dodd informed me that he had closed the books, so to speak, about 6 o'clock and that there were no more vacancies.

1450 Seeing that Captain Dodd was my superior I didn't question his authority or the information he gave me.

Later on, when the men came back and applied for their jobs I told them there were no more vacancies.

Q. Isn't it a fact that the time element became important at about 9:00 p. m., October 8th, namely, when Mr. Loudermilk and Mr. Palmer showed up and applied for work?

Mr. MERRICK. I object to that question. He has answered that. This is just argument.

Trial Examiner EICKHOFF. Your question is argumentative. If you direct questions to bring out facts then I will let the witness answer.

By Mr. EDISES:

Q. Isn't it a fact that the so-called time element first became important when Mr. Loudermilk and Mr. Palmer showed up for work, and that it had not been operative in the case of any other men?

Mr. MERRICK. That is again pure argument. He has testified the men were taken back in the order in which they applied, and when all the vacancies were filled then the last four were not taken back.

Mr. EDISES. He can answer the question.

Trial Examiner EICKHOFF. Who was the first applicant to be refused employment, if you know?

The WITNESS. The first that were told there were no vacancies were Palmer and Loudermilk. They came in about 9:00 o'clock, I think, or 9:30.

1451 Trial Examiner EICKHOFF. Is that what you wanted?

Mr. EDISES. Thank you.

By Mr. EDISES:

Q. And at that time you knew then who was going to be—change that—At that time you knew which of the outside men, namely, which of the men from Chicago, New York, and Los Angeles, were going to remain in San Francisco, is that correct?

A. Yes.

Q. And you then had your full complement of operators?

A. Well, Captain Dodd informed me we had a full complement, I think, it was at 6:00 o'clock or something like that.

Q. And if there had been a vacancy, one of the five, namely, Loudermilk, Rone, Bash, Palmer, or Phelps, would have gotten it, is that correct?

A. Correct.

Q. Isn't it a fact that about a week later a fellow by the name of Titus came out here from Chicago and was given a job?

A. No. He came out here on a transfer. He transferred with another operator by the name of Senseman, who came out here from Chicago.

Q. Well, you didn't send anyone out of this office, did you, when he came?

A. Senseman was—it was a mutual transfer between those fellows.

Q. You say Senseman was transferred from San Francisco

1452 to Chicago?

A. Yes; and Titus transferred here to take his place.

Q. When was that?

A. I couldn't say what time it was.

Q. Was that after the strike?

A. Yes, sir.

Trial Examiner EICKHOFF. Was anyone put on between the time your complement was filled and Loudermilk applied, that is, between 7:00 and 9:00 of that night?

The WITNESS. No, no.

By Mr. EDISES:

Q. What obligation did you have to Mr. Titus that led you to put him to work?

A. I didn't have any obligation to him.

Q. How did you happen to put him to work then?

A. He was—there was a transfer between the two men.

Q. When did you first know of this transfer?

A. When did I first know of this transfer?

Q. Yes; when did you first know that he was going to be transferred?

A. That was official advice from Chicago.

Q. Prior, or after the strike?

A. After the strike.

Q. Do you know where Mr. Titus was working before he came to San Francisco?

A. Chicago.

1453 Q. Do you know how long he had been working for the company?

A. No; I don't know.

Q. Is it possible that Mr. Titus could not have been working for the company before and was employed for the first time in San Francisco?

A. No.

Q. Are you quite sure of that?

A. Yes; I am quite sure.

Q. You are sure he was working previously?

A. Yes; working in Chicago.

Q. But you don't know how long?

A. No.

Q. When did you first learn that strike breakers were coming to San Francisco and would have to be taken care of?

A. You mean the men coming from New York?

Q. Yes.

A. I first heard about that Monday afternoon.

Q. Monday afternoon. And what did you learn about them at the time?

A. I learned they were coming out here to work.

Q. From whom did you learn that?

A. From Mr. Rodman.

Q. And what was said about the conditions of their employment, their tenure, and so on?

1454 A. They were coming out here to stay if they wanted to, permanently. As I said before, they were supposed to get a certain raise and classification when they came out here.

Q. And you learned all that at the time you first spoke to Mr. Rodman?

A. Yes.

Q. Where did you first get the idea that Mr. Stone would have to pass on the re-employment applications of the eleven men?

A. Well, I think I have explained that before, too. It was just the outcome of the fact that the orders that these men could stay here if they wished came from Mr. Stone in the first place.

Q. But you had not received any instructions from Mr. Rodman or Mr. Stone or anyone else, to the effect that Mr. Stone would first have to pass upon the applications of these men?

A. No, no.

Q. Where were you during the period that Mr. Hatch was phoning the various employees from the lobby of the Bellevue?

A. I was out. I left for about an hour or an hour and a half, or maybe two hours.

Q. What were you doing? Where did you go?

A. To tell you the truth, I went and got a drink or so.

Q. You didn't see Mr. Rodman or any other company officials?

A. No. I saw nobody.

1455 Q. Did you telephone them?

A. No.

Q. You felt that you needed a stimulant for the coming struggle, I suppose?

A. I had been up a long time and was pretty weak.

Trial Examiner EICKHOFF. There is no need going into that.

By Mr. EDISES:

Q. You have testified that you were very anxious not to influence the meeting in any way; is that true?

A. That is right.

Q. Well, wouldn't it have been possible for you to simply have told Mr. Hatch what men could not be re-employed, and the circumstances under which they might file their re-applications, and have him give that information to the men, thereby freeing the meeting from any possible domination by yourself?

A. Yes; I could have done that.

Q. And wouldn't that have resulted in a much freer exercise of choice on the part of the men?

A. I don't think so. I wasn't in the room. I was in a different room. As a matter of fact, when Mr. Hatch called me up first, he said he would like to have me there to state the conditions, because he felt that his word wouldn't be any good and they would like to have somebody there to represent the company so the men

1456 would know what was said came from the company.

Q. Nevertheless, you were aware, Mr. Jorgensen, that your presence in that room would necessarily influence the men; isn't that true?

A. I don't think so. I wasn't present in the room. I don't see why my presence there should influence them in any way. I didn't

try to influence them. As a matter of fact, I didn't see why I shouldn't be there. If I had been called at any other meeting, whether an ARTA meeting or not, and they had wanted to know if they could come back, I would have gone and told them. I wouldn't have cared for the place or time.

Q. Have you withheld any information from Mr. Rodman as to what took place just prior to and during and just after the meeting at the Bellevue?

Mr. MERRICK. I object to the use of the word "withheld." If you want to ask him whether he has given him a full account, or as full an account as he has given here, or something like that—The implication about the use of that word, I think, is quite unnecessary.

Trial Examiner EICKHOFF. It is just a matter of terminology. I will permit the question.

A. No. It has been talked over.

By Mr. EDISES:

Q. And you have given him a full report, have you, of everything that happened during that period?

1457 A. I would say yes.

Q. Do you remember having, at various times, spoken to operators at the H. B. office and told them that it wasn't necessary to have a union, that the company would take care of the needs of the men, and that no outside labor organizations were necessary for their well being and welfare?

A. I remember I have been asked several times. I think that was in 1934, when I was supervisor on the night trick, and there was a great deal of discussion going around, and I was finally told that they were trying to start a union. I remember at that time I was asked about my opinion and I told the men that I had been with the company probably longer than anybody there and that I always found the company square, was treating its men right, and that whenever we had a grievance we would send a sort of a little note, or something like that, to Mr. Tuel, and he would either tell us "Yes" or "No"; and if he told us "Yes," all right; and if he told us "No," he would give a reason, and we always believed Mr. Tuel. And I said I didn't see why it was necessary to bring outsiders in to represent us.

Q. You made your position in that respect clear?

A. Yes.

Q. How did you feel about the so-called strong-arm tactics on the picket line? Were you annoyed by that?

A. Strong-arm tactics?

1458 Q. I believe you referred, or someone referred to certain tactics on the picket line as being of a strong arm variety.

A. I didn't refer to anything like that. You must be referring to the McKenna incident. I guess I didn't feel very nice about that. I felt it wasn't necessary.

Q. You were quite provoked about it, as a matter of fact?

Mr. MERRICK. This is, I understand, redirect. I don't know how technical you want to be about such matters, but certainly this is not,

this line of questioning does not come within the scope usually accorded an attorney on redirect examination.

Mr. EDISES. All these things have been testified to on direct, then cross, and then redirect.

Mr. MERRICK. They didn't come out on cross at all.

Trial Examiner EICKHOFF. That incident, I do not see, is not of any importance.

Mr. EDISES. Will you read the question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.)

By Mr. EDISES:

Q. Weren't you?

A. Well, as a matter of fact, I was rather disappointed. I had known all these men for a long time and I didn't think they would stop a telephone girl going into the building.

Q. Who did you regard as the perpetrators of that act?

A. I didn't give that any thought.

1459 Q. You knew, however, who was responsible, didn't you?

A. Yes, I heard who it was at the time.

Q. Who was that?

A. I have almost forgotten who it was now. I think Phelps' name was mentioned.

Q. And some other name?

A. I think there were some others.

Q. Do you remember who?

A. I don't recall right now.

Q. Do you know whether Mr. Bash's name was mentioned?

A. As a matter of fact, I don't remember; I think it was.

Q. You made a statement yesterday, in response to a question by Mr. Merrick, that the strike probably couldn't have been avoided; what did you mean by that?

A. Well, I don't know that I—There was a certain feeling, I knew, around the operating room for quite a time, that something was about to happen. I didn't pay a great deal of attention to it except I knew something was about to happen. That is why I say that probably it couldn't have been avoided.

Q. Do you think that your feeling that something was about to happen is an explanation of your statement that the strike couldn't have been avoided?

A. Well, maybe I shouldn't have said that; I don't know.

Q. Did you have some further reason for believing it?

A. No; I didn't.

1460 Q. No further reasons?

A. No.

Q. You testified yesterday——

Examination by Trial Examiner EICKHOFF:

Q. You mean to say that when you felt that the strike or trouble was imminent, that you didn't pay much attention to it?

A. Well, naturally, I was apprehensive. I didn't want to see a strike going up, but I didn't see where I could do anything about it.

Q. You knew there would be a problem in the office?

A. I knew that, yes, very much.

By Mr. EDISES:

Q. You testified yesterday that other operators than McDonough were taken from the H. B. operating room and put on solicitation work, and you mentioned Mr. Poy and Mr. Williams, the latter as having done so rarely. Can you think of any others who likewise did solicitation work?

A. No; I can't think of it now.

Q. It is a fact, isn't it, that these two were the only ones who did that sort of thing?

A. No; I wouldn't say that; I couldn't say.

Q. Wouldn't you remember if any of the other operators had been taken away?

Mr. MERRICK. I don't think that is necessary.

1461 Trial Examiner EICKHOFF. I will sustain an objection to that.

Mr. MERRICK. I object.

Trial Examiner EICKHOFF. Sustained. It is reiterating and argumentative.

By Mr. EDISES:

Q. Isn't it a fact, Mr. Jorgensen, that Mr. Poy, being a Chinese, was used for solicitation work among Chinese customers?

Mr. MERRICK. He said so on his examination, and that is what he gave as a reason.

By Mr. EDISES:

Q. And that is the reason why he did that sort of work?

A. Well, I don't know. I imagine it is.

Q. And then, in the case of Mr. Williams it was an exceptional practice?

Mr. MERRICK. That is purely argumentative. Why can't we get on with something?

Trial Examiner EICKHOFF. I will allow the question.

A. I remember about a year or more ago, I think, that every man in the H. B. office was circularized with certain information, certain tables, and rates, and so forth, and everybody was requested to obtain all the accounts they could. It is a common practice, not alone with Mackay but with other telegraph companies, that everybody is supposed to try to get business. If a man should obtain a hot tip,

1462 even during office hours, I am sure the company would be perfectly willing to let him off during work; I know I would.

By Mr. EDISES:

Q. I am not referring to that type of thing, Mr. Jorgensen; I am referring to operators who were taken——

A. (Interrupting.) I am talking about operators.

Q. (Continuing.) Who were taken off their regular work for a considerable period of time and put to solicitation work, and I am asking you whether you know of any others than Mr. Poy and Mr. Williams, who were allowed to do that.

Mr. MERRICK. He has answered that question several times.

By Mr. EDISES:

Q. You can't think of any other names?

A. Not right now; no.

Q. Other than Mr. McDonough, of course?

A. No.

Q. Can you tell me more particularly just the type of thing that Mr. McDonough did in connection with the solicitation?

Mr. MERRICK. Is this to be permitted indefinitely on redirect examination?

Mr. EDISES. It came out on cross.

Mr. MERRICK. I object. He told all he knows about that.

Trial Examiner EICKHOFF. I think we have gone into that as fully as can be developed by this witness.

Mr. EDISES. The testimony, as I recall it, Mr. Examiner,
1463 was that Mr. McDonough was employed to do solicitation work in the financial district to rectify some of the damage which was done by Mr. Phelps in his so-called anti-company activities.

Now, I want to bring out the fact that at the time that Mr. McDonough did this solicitation work in the financial district, Mr. Phelps had not been carrying on any kind of anti-company activity, but, on the other hand, had been doing everything in his power to hold the company's customers.

Trial Examiner EICKHOFF. All right, ask him that.

By Mr. EDISES:

Q. Don't you know, at the time that Mr. McDonough was supposed to be rectifying Mr. Phelps' anti-company activities, that Mr. Phelps had not done anything contrary to the company's interests?

A. I don't know anything about Phelps. He wasn't under my jurisdiction. I don't know anything about him.

Q. Don't you remember making the statement yesterday that Phelps had been weaning the company's customers away from them?

A. I heard it later; I didn't know it at that time.

Q. Do you know who the most active members of ARTA were?

A. Do I know who the most active members were?

Q. Yes.

A. Well, I had a letter from Mr. Salisbury giving me the
1464 names of the Relations Committee and the Administrative Committee. Naturally, I knew that they must have been active to be on there.

Q. And Mr. Palmer and Mr. Loudermilk were on that committee, were they not?

A. There were two different committees. I don't think Loudermilk was on the last one. He was on one, I remember. The last one, I believe, consisted of Palmer, Martinelli, and Bash.

Q. Did you have any conferences with either of those committees in regard to wages, working conditions, grievances?

Mr. MERRICK. Mr. Examiner, this is going back over the things he went over with his other witnesses when Mr. Jorgensen was present. It certainly is not proper redirect examination. We didn't go into this on cross.

Trial Examiner EICKHOFF. I think he went over it with this witness. I couldn't be sure. I will allow the question.

A. I think I remember testifying before that this committee of Martinelli, Palmer, and Bash, I believe, they were the ones out to see me a couple of times about some things that were straightened out immediately. As a matter of fact, I was just about to do a certain thing that they requested.

Trial Examiner EICKHOFF. The question is whether you had negotiations with them.

The WITNESS. I did, yes.

1465 By Mr. EDISES:

Q. My recollection was that your testimony yesterday was to the effect that you didn't have any such conferences.

A. Not about wages, no.

Q. About working conditions?

A. Well, I wouldn't say it was working conditions.

Q. What would you consider——

A. (Interrupting.) Some little things that had to be settled—it was settled immediately and never came up again.

Q. The matter of overtime, would you consider that a working condition.

A. Oh, yes. I did have one, that is right.

Q. Can you identify this letter?

A. (Examining letter.) Yes.

Q. Is that your signature?

A. That is right; my initials.

Mr. EDISES. I offer in evidence this letter from Mr. A. C. Jorgensen to Mr. Loudermilk, Mr. Palmer, Mr. Martinelli, dated October 3, 1934, San Francisco, California.

Mr. MERRICK. I object simply on the ground that it is wholly immaterial and irrelevant and doesn't tend to prove any fact that is in issue in this case.

For what purpose is it offered?

Trial Examiner EICKHOFF. It might tend to prove that Mr. Jorgensen knew these men were acting on behalf——

1466 Mr. MERRICK. (Interrupting.) He admitted it. He said he received a letter from Salisbury and he knew they were on the committee.

Trial Examiner EICKHOFF. It may be admitted as Board's Exhibit No. 19.

Mr. MERRICK. What does that add to his testimony? He has testified he was notified they were on the committee, and he now testifies he had negotiations with them in regard to overtime. Why encumber the record with a memorandum of that kind?

Trial Examiner EICKHOFF. His testimony was rather vague on that point.

Mr. MERRICK. The only question was whether he did have the conference, and he said that he did. A memorandum of it doesn't add anything. We are not interested in what took place at the conference, as I understand it, but merely that there was one.

Trial Examiner EICKHOFF. His recollection was refreshed when he saw the letter.

Mr. MERRICK. That doesn't mean it has to be put in evidence.

Trial Examiner EICKHOFF. There is no objection to it.

Mr. MERRICK. I object to it because the contents are not of any interest in the proceeding.

Trial Examiner EICKHOFF. I am admitting it—What is
1467 the number, Mr. Reporter?

The REPORTER. Nineteen.

Trial Examiner EICKHOFF. I am admitting it as Board's Exhibit No. 19.

(The letter referred to was received in evidence and marked "Board's Exhibit No. 19, Witness Jorgensen.")

Mr. MERRICK. Your people are getting your copy of the record free and I think it is unfair to the company to make them have to buy a copy of all this junk that is being admitted.

Trial Examiner EICKHOFF. I never saw a case tried on what the copy of the record is going to cost. There are more serious things than that.

Mr. MERRICK. Usually there is some purpose in admitting exhibits, but since this case isn't being tried on that basis, I have another reason.

Mr. EDISES. I have here a statement prepared by Mr. Rone, in which he gives an account of what happened at the meeting in the Postal clock room, October 10th, 1935, after Mr. Jorgensen arrived in the room. With the Examiner's permission I would like to read this short statement and ask Mr. Jorgensen whether the statements contained herein are correct according to his best recollection.

Mr. MERRICK. Is this (referring to the statement) in evidence? Is this his statement of the testimony in this case?

1468 Mr. EDISES. I don't believe these particular statements are in evidence.

Mr. MERRICK. Then I object.

Mr. EDISES. May I be permitted to ask him——

Trial Examiner EICKHOFF. The question is, whether this statement you are about to make, represents a certain conversation; is that it?

Mr. EDISES. A certain conversation and events that took place in the Postal clock room.

Mr. MERRICK. I object to it. It is not a statement of what is in evidence in this proceeding, and it is an attempt indirectly to get in

statements that he did not put in when he had this very person on the stand as a witness.

Trial Examiner EICKHOFF. Overruled.

By Mr. EDISES:

Q. In the event that you disagree with any of these statements I would like to have you tell me the particulars in which this statement is incorrect.

Mr. MERRICK. I would like to ask more about the circumstances under which this statement was given by Mr. Rone, and when.

Trial Examiner EICKHOFF. That is proper.

Mr. EDISES. This statement was made on November 13, 1935, to the Regional Director and the Examiner.

Mr. MERRICK. The present Examiner?

Mr. EDISES. No; not this Examiner, but Mrs. Rossiter,
1469 who is termed as an Examiner; not a trial examiner.

Trial Examiner EICKHOFF. Just a minute! This witness was not present?

Mr. EDISES. No; he was not present.

Trial Examiner EICKHOFF. Well, I don't think I can allow that. If you have evidence to bring out by this witness as to facts, you should bring it out by interrogating him, not by reading a story and then saying, "Is that the true situation?"

Mr. EDISES. My only intention was to save time. However, I can ask him specific questions as to each of the statements contained herein.

Trial Examiner EICHKOFF. If it is anything new.

By Mr. EDISES:

Do you recall the meeting of October 10th in the Postal clock room?

A. Yes.

Trial Examiner EICHKOFF. He said he did.

By Mr. EDISES:

Do you remember making—strike that. Do you remember being asked by certain of the men present the status of the strikebreakers who had come to work for Mackay, and how long they were going to stay with the Company?

A. Yes.

Q. And do you remember stating that—do you remember being asked to confirm Mr. McDonough's statement that these strike-
1470 breakers were to stay only a week?

A. Yes—no; I don't know about a week, no; a short time.

Q. A short time?

A. Yes.

Q. What did you say in response to that?

A. I said I understood that most of the men would return shortly, with the exception of a couple of men who probably would be staying here.

Q. You stated, did you not, that these eleven names on the original list had been reduced to five?

A. Had been reduced to five?

Q. Yes.

Mr. MERRICK. I object, Mr. Examiner, to examining this witness as to whether he said certain things, which are not in evidence, as to what he did say.

Mr. EDISES. I am asking him now.

Trial Examiner EICKHOFF. This is cross examination.

Mr. MERRICK. As long as it is clear that is not representing to this witness that this does represent anything that has been testified——

Mr. EDISES. (Interrupting.) I am asking him if he did say these things.

A. I don't understand that. I said the list had been reduced to five?

By Mr. EDISES:

Q. Yes.

1471 A. At that meeting?

Trial Examiner EICKHOFF. The question is, did you say that?

The WITNESS. No.

By Mr. EDISES:

Q. What did you say in connection with the lesser number of names?

A. I don't remember saying anything like that. I already told what I knew about that meeting; that when I came down there I was asked——

Trial Examiner EICKHOFF. Just answer the question.

By Mr. EDISES:

Q. Didn't you say something about the eleven names that were originally on the list having been reduced to five names?

Mr. MERRICK. I must state my objection more clearly to this. As I understand it, he can ask questions only as to whether a witness said a certain thing, and then quote something; if that is in evidence that someone else said that is what he said, or if he is prepared to put on the stand someone who will so testify. I never heard of any case where he can phrase questions and say, "Did you say this?" and say something which he is not prepared in any way to show that anyone thinks he did say. Otherwise you can not put any limit at all on the examination. You can ask him a thousand questions, "Did you say this and that?" I understand he has to be lim-

1472 ited to what has been testified to, or which he is prepared to say will be testified to.

Mr. EDISES. I have good reason for believing——

Trial Examiner EICKHOFF. My understanding of cross examination is that you can ask a witness if he said such and such a thing, for the purpose of tripping him up, or leading him into a trap.

Mr. MERRICK. But only when you quote what he said, or if you are prepared to put someone on the stand that says this is what he did say.

Mr. EDISES. That is a strange theory of cross examination. I never heard of that before.

Trial Examiner EICKHOFF. Proceed.

Mr. MERRICK. I wanted to make my objection clear; that is all.

By Mr. EDISES:

Q. Do you know anything in reference to this reduction of the number of names on the list that I have just asked you about?

A. No, sir. I think I testified the other day what I remembered about that meeting.

Trial Examiner EICKHOFF. Your answer was "No."

The WITNESS. Yes.

By Mr. EDISES:

Q. Do you remember Mr. Patterson asking you why he was on the list?

A. No. I remember Mr. Patterson asking me, "What is my status?"

1473 Q. And what did you say to that?

A. I told him that his application for re-employment had been approved by Mr. Stone and he was in the same status as all the other men that returned to work.

Q. Do you remember Mr. Patterson asking you why he was on the list and your saying that there were times like these when things had to be cleared up, and there were also personal reasons why he was on the list? Do you remember saying——

A. No, sir; I don't remember that.

Q. Do you remember Mr. Rone asking you whether or not he was fired?

A. I don't remember whether it was at that meeting. I remember his asking me that.

Q. What did you say to that?

A. I said "No."

Q. That he had not been fired?

A. Had not been fired.

Q. What did you mean by that?

A. I meant that he had walked out; he hadn't been fired.

Q. And don't you remember Mr. Rone asking you to state the reason why he was not being re-employed, and your refusing to state the reason?

A. Don't I—No; I don't remember that.

Q. You remember his asking you, though?

A. It is not very—it seems to me Rone asked me about the

1474 same question that Patterson asked me.

Q. He asked you why he wasn't being taken back, didn't he?

A. I think that was it, and I told him there was no vacancy when he applied.

Q. You didn't say anything about his being unsatisfactory to the company for any reason?

A. No. I was only there about three or four minutes. I couldn't have said a great deal.

Q. You stated that his job was filled but you would be glad to give him a recommendation?

A. I told all the men that; and I did.

Q. And in particular you told Mr. Rone that, that day?

A. I don't remember if I told him that that day.

Q. You have at various times told all these five men you would be glad to give them a recommendation, haven't you?

A. I told them I would recommend that they be employed, re-employed, when a vacancy occurred, which I did.

Q. And likewise, for any other job that they wanted, isn't that correct?

A. Well, I would do that for anybody.

Q. That if they wanted to get a job with another company you would recommend them?

A. I wouldn't recommend them; I would tell them that they were good operators. That was what I told them.

Q. That would be equivalent to recommending them?

1475 Mr. MERRICK. That is argumentative, and I object.

Trial Examiner EICKHOFF. That is enough.

By Mr. EDISES:

Q. Do you remember Mr. McLaughlin then getting up and stating that he thought that the men ought to have a company union?

A. No, sir. If he did it was not while I was there.

Q. Who presided at that meeting?

A. I don't know. Somebody called me down and I came in and I think Mr. McLaughlin asked me, he said he wanted to ask me a few questions; that the men wanted to know if the strike would be held against them. I have testified to that already.

Q. Isn't it a fact that the men who worked in the places of the men who attended the meeting received additional pay?

A. Received additional pay? What are you talking about?

Q. Certain men filled the places of those who went to the meeting, is that not correct?

A. Yes.

Q. And they received higher than the customary rate of pay, is that not correct?

A. The men that worked in the places of the men who were downstairs?

Q. Yes.

A. No.

Q. You are quite positive of that?

A. Oh, yes. Nobody was docked and nobody was paid overtime.

1476 Q. However, the men who filled the places of these men who went to the meeting got extra pay, did they not? That

is to say, they got pay for the period they otherwise would not have been working?

A. No.

Q. Well, now, did certain men—You testified that certain men filled the places of the men who went to the meeting, is that true?

A. No; I don't know that. I know we were working short while that was going on. There may have been some men working there that should have been off at four o'clock, but we were mostly working short during that period. I remember that distinctly.

Mr. EDISES. Will you read back the witness' answer to my question, several questions back, in regard to whether or not the places of the men who went to the meeting were filled?

Mr. MERRICK. I submit this shows the danger of allowing this line of examination to continue indefinitely. He is asking him a general question and now he is trying to show that he has made inconsistent statements because he didn't weigh every word that he said. I think it is ridiculous.

Trial Examiner EICKHOFF. We will take a five minute recess while you find what you want.

(At this point a recess was taken, after which proceedings were resumed, as follows:)

1477 Trial Examiner EICKHOFF. Did you find what you wanted?

Mr. EDISES. Yes. Will you read back the first of the questions I asked you for, Mr. Reporter, and the answer of Mr. Jorgensen?

(Thereupon the reporter read aloud the following as above recorded:

"Q. Certain men filled the places of those who went to the meeting, is that not correct?

"A. Yes.")

Mr. EDISES. Now read the second of those questions and the answer.

(Thereupon the reporter read aloud the following as above recorded:

"Q. Well, now, did certain men—You testified that certain men filled the places of the men who went to the meeting; is that true?

"A. No; I don't know that. I know we were——")

Mr. EDISES. That is enough.

By Mr. EDISES:

Q. Did any of the men who filled the positions of the operators who went to the meeting do so after their regular working hours?

A. Well, they would have to because some of them were off at four o'clock. Nobody was paid overtime, if that is what you want to find out. I am sure of that.

Q. In other words, it is your position that the men who
1478 worked after hours, in order to take the places of men who went to the meeting, worked for nothing?

A. Yes.

Q. Would your records show that?

A. They show they weren't paid any overtime.

Q. I am not speaking of overtime. I am speaking of any pay at all—did they receive straight time for the period they worked overtime?

A. Our records would show that.

Q. And they did receive straight time, did they not?

A. No.

Q. In other words, they worked for nothing?

A. Yes.

Q. About how many men worked for nothing that afternoon?

A. I can't say. I didn't make any notations on the time sheet, or anything.

Q. Well, would there be as many as 15?

A. I couldn't say. At that time of the day, four o'clock, we were working pretty short-handed—I know that—for about a half hour.

Q. Can you give me an estimate of about how many men——

Trial Examiner EICKHOFF. What difference does that make, if the company didn't pay them? I suppose you wanted to show that the meeting was subsidized to some extent.

1479 Mr. EDISES. I would like to be able to check on whether or not the company did pay them.

The WITNESS. I am absolutely sure that nobody was paid because my ledger would show that.

By Mr. EDISES:

Q. Did you speak to the men and ask them if they would mind working overtime while the other men went to the meeting?

A. No; I didn't speak to anybody.

Q. How was it arranged?

A. Well, this petition went around there, and there was a meeting down there. I remember personally telling a couple of men that there was a meeting down there and if they wanted to go they could; if they didn't, they didn't have to.

Q. How did you arrange to have their places filled?

A. We can work short for half an hour or so.

Q. Isn't it a fact, Mr. Jorgensen, that the places of certain of the men who went to the meeting were filled by Los Angeles loyal employees?

A. Not to my knowledge. I don't think.

Q. You don't think so?

A. No.

Q. But it is possible they may have?

A. They may have; I don't know.

Q. Would it refresh your recollection any——

A. (Interrupting.) As a matter of fact, I didn't even know whether the Los Angeles bunch was there or not. They may

1480 have gone back to Los Angeles; I don't know.

Q. Would your records indicate who worked that afternoon?

A. Yes.

Mr. EDISES. Will you produce those records of who worked and whether or not they were paid, this afternoon?

Mr. MERRICK. This is not the proper time to request further records on redirect examination.

Mr. EDISES. A situation has arisen that could not have been foreseen, Mr. Merrick. Will you produce them?

Mr. MERRICK. What is it you want?

Mr. EDISES. I want the records which will show who worked after four p. m. for about two hours on October 10th.

Mr. MERRICK. I think the witness has said the records wouldn't show anyone except those who were supposed to be assigned to that trick from four to twelve. They will be shown by the records as those who worked during that period, and no one else.

Mr. EDISES. He just testified his records will show who filled the places.

Mr. MERRICK. He testified just the opposite.

The WITNESS. No; I said my records will show who worked at that time.

By Mr. EDISES:

Q. Will it show who replaced the men who went to the meeting?

A. No; it won't show that, because no record was made of it.

1481 We were just working short. Maybe some of them filled in, and some that didn't want to go down, stayed. I don't remember a lot about it. I know we were working very short, and it is a slack time of the day, around four o'clock, so we could easily do it.

Q. Isn't it a fact, Mr. Jorgensen, that some of the Los Angeles men were taken from their hotel and brought to the H. B. office and filled in for the men who went to the meeting?

A. Not to my knowledge; absolutely not.

Q. Is it possible that that could have been done?

A. I don't see how.

Trial Examiner EICKHOFF. I think that is enough along that line, Mr. Edises.

Mr. EDISES. No further questions.

Recross examination by Mr. MERRICK:

Q. When were you made chief operator?

A. July 1, 1934.

Q. These remarks that you were asked about by Mr. Edises a few minutes ago, in regard to the necessity or lack of necessity for a union to represent the men at the H. B. office, when did you make them? How close can you fix the time of that conversation?

A. That was while I was supervisor on the night trick.

Q. Prior to July 1, 1934?

1482 A. Oh, yes; quite a long time prior to that.

Mr. MERRICK. That is all.

Trial Examiner EICKHOFF. Have you any other witnesses?

Mr. EDISES. I have no other witnesses, Mr. Examiner.

I shall possibly have one or two documents to offer in evidence. I may have them here at this time, or might I be permitted to present them at the first opportunity that I have?

Trial Examiner EICKHOFF. If you are prepared to rest you had better put them in now.

May the witness be excused?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. You may be excused.

(Witness excused.)

Trial Examiner EICKHOFF. Have you anything further to offer at this time, Mr. Edises?

Mr. EDISES. I don't think so, Mr. Examiner.

Trial Examiner EICKHOFF. Then the Board rests?

Mr. EDISES. Rests.

Trial Examiner EICKHOFF. Are you ready to proceed at this time, Mr. Merrick?

Motion to dismiss

Mr. MERRICK. I would like to make a motion, then, to dismiss the complaint on account of the complete failure by the Board to offer any evidence to substantiate the charges that have been made.

1483 In giving all possible favorable interpretation to the evidence that has been submitted by the Board, there is, nevertheless, a complete failure to show any violation of the National Labor Relations Act.

As I understand the complaint, it charges really two violations:

First, a refusal to re-employ the men because of their union membership and union activities, which it is alleged constitutes both a discrimination against them, because of their union activities, and also amounted to an attempt to interfere in the operations of the union.

Secondly, the allegation contained in Section 8 of the complaint, which I think the Board should be called upon to clarify at this time, paragraph 8, reads as follows:

"The respondent by its various agents and employees on October 5, 1935, did initiate and form a labor organization or plan for the purpose of dealing with its employees concerning grievances"——

Now, there has been no evidence introduced here whatsoever by the Board as to any action by the respondent on October 5th which could possibly be construed as an attempt to initiate or form a labor organization.

Now, because of the loose way in which this—Perhaps I had better say because of the liberal way in which the hearing has been conducted—there has been no opportunity to object to evidence on

1484 the ground that it constitutes a variance, but before the respondent is called upon to produce any evidence, and know what it is rebutting, I think the Board should be required now to state whether it desires to amend that complaint in any way—what meeting they are talking about, what acts they are referring to,

whether this date of October 5th is an error, and whether they want to have you consider what they have offered as to what took place on some other date as bearing upon the allegation in this section.

Before proceeding with the argument of the motion to dismiss I would like to have the Examiner rule on that.

Mr. EDISES. I would like to say just a word, if I may, in reply to Mr. Merrick.

Trial Examiner EICKHOFF. Just a minute. You are directing my attention to paragraph 8 of the complaint?

Mr. MERRICK. Yes, Mr. Examiner. That is the only paragraph which——

Trial Examiner EICKHOFF. You make some specific motion with reference to it?

Mr. MERRICK. Yes. I move to have the complaint dismissed as to the allegations contained in paragraph 8, on the ground that there is not the slightest scintilla of evidence to support the charge contained in that paragraph of any action by the respondent on October 5th.

Trial Examiner EICKHOFF. You are not objecting to the
1485 sufficiency of the pleading at this time?

Mr. MERRICK. No, I won't object to the pleading as such.

Trial Examiner EICKHOFF. You are not demurring to that portion of the complaint?

Mr. MERRICK. I am not sure about—This isn't the place to demur after the completion of the complainant's testimony. He has put in all the evidence that he has to support those allegations.

Now, the date is usually not considered material, so that a demurrer to a complaint in advance of the introduction of any evidence would not hold if the only difference were that of date. But as the complainant has put in all his testimony, then it seems to me that the complaint either must be dismissed as to that allegation or the complainant must amend his petition.

Mr. EDISES. Mr. Examiner, Mr. Merrick anticipated a request that I was going to make to the Examiner, namely, that, as provided in the Rules and Regulations, an amendment be permitted to conform to proof, whereby the words, "On October 5, 1935," would be stricken and the words "On or about October 7, 8, 9, 10, 1935," be substituted in their place.

Trial Examiner EICKHOFF. That is paragraph 8?

Mr. EDISES. Yes.

1486 Trial Examiner EICKHOFF. How will the first sentence of Paragraph 8 read after being amended as you request?

Mr. EDISES. It will read:

"The respondent, by its various agents and employees, on or about October 7, 8, 9, 10, 1935, did initiate and form a labor organization or plan"—and so on.

Trial Examiner EICKHOFF. Have you anything further to say, Mr. Merrick?

Mr. MERRICK. No.

Trial Examiner EICKHOFF. The motion to dismiss is denied and leave to amend is granted.

Mr. MERRICK. I have nothing further to say on the point of the amendment.

As I said, I haven't completed my argument on the motion to dismiss.

Trial Examiner EICKHOFF. I am not sure that I understand the situation, then.

Mr. MERRICK. I merely said that I was making a motion to dismiss, but before making it I thought that either the Examiner should rule that he cannot make an amendment, or permit him to make an amendment to conform to the proof, so I will know what I am moving to dismiss.

Trial Examiner EICKHOFF. Then I will withdraw my ruling on your motion to dismiss and I will permit the amendment.

Mr. MERRICK. Yes.

1487 Trial Examiner EICKHOFF. Could I speak to counsel up here for a moment?

(Whereupon counsel consulted with Trial Examiner Eickhoff.)

Trial Examiner EICKHOFF. The hearing will be resumed at 2 o'clock.

(Thereupon, at 12 o'clock noon a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2:05 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner EICKHOFF. You might, Mr. Edises, at this time, make a statement for the sake of the record that you will shortly ask leave to file an amended complaint, if you intend to do so.

Mr. EDISES. I do, and I hereby request leave to file an amended complaint in certain particulars to conform to proof that has been introduced at this hearing.

Trial Examiner EICKHOFF. I will withhold a ruling until the amended complaint is before us.

Mr. MERRICK. I have been informed by counsel for the Board about the changes which he is making in the complaint which, I understand, will be in the amended complaint which will be offered later, and on that basis I would like to make a motion at this time to dismiss the complaint in its entirety, and which I will take up section by section.

1488 The first section that appears to charge a violation of the Act is Section 5.

I didn't mention the fourth section because the allegation there is simply that the respondent, during the period approximately October 7th to 10th, did refuse to re-employ the five named individuals.

Trial Examiner EICKHOFF. May I interrupt just a moment? May it be stipulated that the motion which you are now making will apply to the amended complaint, so that it need not be repeated later?

Mr. MERRICK. I would appreciate that.

Mr. EDISES. So stipulated.

Mr. MERRICK. (Continuing.) That is, referring to the language in paragraph 4, it merely charges that the company, during this period, refused to re-employ them and has since refused to re-employ them. No reason is given and there is no allegation that that constituted discrimination or is a discrimination of any kind.

The fifth paragraph alleges that the respondent refuses to re-employ the five named individuals for the reason that they joined and assisted a labor organization known as American Radio Telegraphists' Association, and engaged in concerted activities with other employees in the San Francisco office for the purpose of collective bargaining and other mutual aid and protection.

1489 I move to dismiss that charge on the ground that no evidence has been introduced in this proceeding to show that that was the reason for the refusal to re-employ the named individuals.

I move to dismiss the charge contained in the sixth paragraph, which is that this refusal to re-employ, that by their refusal to re-employ, the respondent interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

The reason for my motion to dismiss this allegation is the same as that assigned for the previous allegation.

The next allegation in Paragraph 7 alleges that by this refusal to re-employ, the respondent discriminated in regard to the hire and tenure of employment of these five named individuals, and did discourage and is discouraging membership in the union in violation of another subdivision of Section 8 of the same Act.

I submit there is no evidence whatsoever in this proceeding so far to support that charge.

The eighth paragraph alleges that during the period, October 7 to 10, 1935, the respondent initiated and formed a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act, for the purpose of dealing with its em-

1490 ployees concerning grievances, for the purpose of interfering with and restraining the rights guaranteed its employees under Section 7 of the National Labor Relations Act.

I move to dismiss that charge on the same basis, that there is no evidence to support it.

Would the Examiner like to hear further argument on those points?

Trial Examiner EICKHOFF. No; I do not think so. I will deny the motion without prejudice.

Mr. MERRICK. Respondent calls as his first witness—I believe that the attorney for the Board was to notify us after lunch whether he had procured all of the minutes of the San Francisco Local of the ARTA.

Mr. EDISES. All of those which we were able to discover are now being typed and we will have the originals and copies here. They ought to be here now. They will be here in a very few minutes.

Mr. LIVINGSTON. Will the Examiner permit me to ask counsel one question and that is, can he state of his own knowledge that these copies he is going to supply are true copies?

Mr. EDISES. All I have done is to take the originals handed to me and hand them to the stenographer to type.

Mr. LIVINGSTON. They are being copied by your own stenographer?

1491 Mr. EDISES. Yes; they are now being copied.

Mr. LIVINGSTON. Under your direction to make the copies?

Mr. EDISES. Yes. The originals will be here, if you care to compare them.

Mr. LIVINGSTON. Not if you have done that.

Mr. MERRICK. The first witness will be Mr. Patterson.

A. E. PATTERSON, called as a witness for the Respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Direct examination by Mr. MERRICK:

Q. Are you an employee of the Mackay Radio and Telegraph Company?

A. Yes, sir.

Q. How long have you been so employed?

A. It will be two years about March 17th, next year.

Q. You were an employee in the company just prior to the strike?

A. Yes.

Q. Did you go out on strike?

A. Well, not exactly. I was on a vacation at the time.

Q. Did you attend a certain meeting at the Bellevue Hotel on the morning, early morning of October 8th?

A. Yes.

Trial Examiner EICKHOFF. Speak a little louder.

1492 By Mr. MERRICK:

Q. Did you hear Mr. Jorgensen say anything at that meeting?

A. Yes. He was called on to give the company's position, or what they were willing to do in this matter, and he stood in the doorway there connecting the two rooms, and read off this list of eleven men. I believe he also made a statement that anyone returning to work, that weren't on that list, would return to their former capacity.

Q. Did he—What did he have to say about the men whose names were on the list?

A. I don't recall him giving any reason, if that is what you mean.

Q. Can you repeat, to the best of your recollection, exactly what he did say when called upon to say something?

A. Why, I believe he said something on the order that the eleven men, and then he read the names, would not be allowed to return to work until their applications were approved by Mr. Stone.

Q. That is all you remember of what he said?

A. Well, that is all I recall; yes.

Q. Was your name on that list?

A. It was.

Q. What did you understand the men on that list had to do in order to get back to work, from what he said?

A. File an application with him.

1493 Q. Was there anything said by Mr. Jorgensen to discriminate between any of the men on that list, or did you understand that they all stood on the same basis?

Mr. EDISES. I object to the question as calling for the witness' conclusion.

Trial Examiner EICKHOFF. Overruled.

The WITNESS. Repeat that again, please.

Mr. MERRICK. Will you read the question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.)

Mr. EDISES. Object to it also as leading.

Trial Examiner EICKHOFF. You don't use the word "discriminate" in any special significance, do you?

Mr. MERRICK. No.

By Mr. MERRICK:

Q. Did he say any terms applied to any one of those on the list that didn't apply to the others? Did he say anything special about any particular individuals on the list, apart from reading their names, as part of the eleven?

A. Not that I remember; no.

Q. You understood that they had to file applications before going to work, and wait for the application to be approved, or what was your understanding?

A. Well, I don't exactly remember whether he said before they went to work, or whether they would have to wait for

1494 approval before they went to work. After I heard my name I didn't get over it for a couple of minutes, so I don't know what was said there for a while.

Q. Did you hear Mr. Loudermilk ask Mr. Jorgensen a question about the men on the list?

A. Well, he might have, but I don't remember what was asked.

Q. You don't remember hearing Mr. Jorgensen say anything further about the men on the list, in response to a question?

A. I don't recall now whether he did or not. There was quite a little argument going on.

Q. Did you hear Mr. Jorgensen say anything just before the meeting broke up, addressed to the meeting at large, just before you left the room?

A. You mean before the meeting as a whole broke up?

Q. Just before you left the room, did Mr. Jorgensen say anything, other than what you have quoted him as saying already?

A. Well, I don't recall what he said. I think he gave the impression that he would withdraw to the other room and leave this voting matter up to the men.

Q. I am referring to a little later stage in the meeting. Did he say anything about going back to work?

A. Oh, yes. He said that after this meeting everybody would go down to the office and just go back to work as usual.

Q. What did you do after the close of the meeting?

1495 A. I went down in the lobby and stood down there for a few minutes, and someone suggested, would they drive down in a car, or whether they would walk. I don't remember who it was. Anyway it was decided they were going to walk to the office. And I walked down to the office with one of the other fellows.

Q. What did you do when you got there?

A. I sat in a chair for a while and waited around, and pretty soon Captain Dodd came in and I went over and asked why I was on the list, or if he knew. He didn't give me any satisfaction. About that time Mr. Jorgensen came up, and shortly after that Captain Dodd left and then Mr. Jorgensen said, "You go ahead to work, Pat, until we get all straightened up."

So I imagine around 6:30 or 7, I went to work.

Q. Did you subsequently fill out an application for reemployment?

A. The next day, or the third day, or the second day afterwards; I don't remember what it was.

Q. That is, you were not required to fill out an application blank before you started to work?

A. No.

Trial Examiner EICKHOFF. When you left the Bellevue Hotel for the H. B. office was it your understanding that you were going to work immediately?

1496 The WITNESS. No, it wasn't.

By Mr. MERRICK:

Q. What was your understanding?

A. I believe Mr. Jorgensen mentioned up there some time that the men that were on this list would also come down there and proceed with filling out these applications, or something like that.

Q. You expected, if you went back to the office, you would be put back to work at least temporarily, didn't you?

A. It wasn't my understanding; no.

Q. Did anything cause you to change your understanding between the time that Mr. Jorgensen spoke and the time you went down to the office and applied for your position?

A. No, nothing. I just had that feeling all the time that I would have to fill out this application before I went to work.

Q. Did you have any special reluctance about filling out an application?

Mr. EDISES. I object to that question, Mr. Examiner, on the ground it is leading and calling for the witness' conclusion.

Trial Examiner EICKHOFF. Overruled.

A. Was that, did I have any objection to filling out an application?

By Mr. MERRICK:

Q. Yes.

A. Well, not in particular; no.

1497 Q. Do you remember that Mr. Loudermilk was present at this meeting?

A. Yes.

Q. He has testified that he asked Mr. Jorgensen, in so many words, "Isn't it a fact that the fellows on that list are as good as out, or fired," or some such thing as that. Do you remember hearing him ask that question?

A. Well, yes; I believe he did, but I didn't exactly know what you meant a while ago when you asked me if I remembered him saying anything.

Q. Do you remember hearing Mr. Jorgensen asked that question?

A. Yes.

Q. What did he say?

A. I believe he answered in the negative and said they would be given the same chance as anyone else after the applications were filed. In other words, I suppose he meant that they had to file these applications.

Trial Examiner EICKHOFF. Never mind what you suppose he meant. Just what he said. Just exactly what was your understanding at the time of what Mr. Jorgensen said and meant, that is, up at the meeting?

The WITNESS. You mean to Mr. Loudermilk's question?

Trial Examiner EICKHOFF. No; with reference to you men on the list.

The WITNESS. Well, it was my understanding that we
1498 would fill these applications out and if they were approved we would return to work in our former capacity as before the strike.

By Mr. MERRICK:

Q. You answered, in regard to my question as to what Mr. Jorgensen answered to Mr. Loudermilk, that he answered in the negative. You mean he said no, it wasn't true, that the men on that list were as good as out, or fired?

A. I believe that is what he said; yes.

Q. You went back to exactly the same position you had prior to the strike?

A. Yes.

Q. On the same trick?

A. Same trick.

Q. And at the same rate of pay?

A. Yes.

Q. Are you, or were you, prior to and during the strike, an active member of ARTA?

A. Well, what do you mean by "active"?

Q. Well, did you consider yourself an active member of ARTA?

A. Well, I belonged to the union. I wouldn't say I was very active because the watch I had didn't allow me to attend very many meetings. The meetings were all held in the evening, and I don't be-
1499 lieve I was but to one meeting, and that was about a year ago this time, when I was on the midwatch; and then I went to one meeting one Sunday afternoon. That is the only ones I was at.

Q. You weren't one of those who joined ARTA reluctantly, were you?

Mr. EDISES. I object to that question, Mr. Examiner, as leading and calling for the witness' conclusion, and improper direct examination.

Trial Examiner EICKHOFF. Overruled.

A. Well, I wouldn't say I joined reluctantly; no. I wanted to know the reason, when they asked me to join, I wanted to know what it was all about, and then I joined.

By Mr. MERRICK:

Q. When did you join?

A. Oh, I think it was two months after I started work there.

Q. That would be about what time?

A. Some time in May, I should say.

Q. May, 1935, or 1934?

A. 1934.

Q. 1934?

A. Yes.

Mr. MERRICK. That is all.

Cross examination by Mr. EDISES:

Q. What class operator are you, Mr. Patterson?

A. At the present time?

1500 Q. Yes.

A. Class B.

Q. What were you prior to the strike?

A. Class B.

Q. Were you ever an officer of ARTA?

A. No.

Q. Were you ever a member of any committees?

A. Of the ARTA?

Q. Yes.

A. No, sir.

Mr. EDISES. No further questions.

Examination by Trial Examiner EICKHOFF:

Q. When you left the Bellevue Hotel and went down to the H. B. office, did you go there for the purpose of going to work immediately, or to find out why you were on the list and what it meant?

A. I went there for the purpose of filling out this application. Well, I believe I was told in the lobby up there—Mr. Jorgensen and another party and myself were standing there waiting and talking, and he told me to come on down with the rest of them, and so I went. But I presumed it was with the idea of filling out the application. I didn't have any idea that I would be allowed to go to work—if that is what you mean.

Q. And then you asked Mr. Jorgensen why you were on the
1501 list?

A. In the hotel room; yes.

Q. I have forgotten whether you said what he told you or not.

A. He didn't tell me. He refused to say.

Q. You say he refused to say?

A. Yes. You see there were two rooms, one here like that, and another one there [indicating], and that was the room that the bed was in, the bedroom, I guess.

Q. Did he tell you who had prepared the list?

A. Well, I asked him but he wouldn't tell me.

Trial Examiner EICKHOFF. Any further questions?

Mr. EDISES. No further questions.

Mr. MERRICK. No.

Trial Examiner EICKHOFF. May this witness be excused?

Mr. MERRICK. Yes.

(Witness excused.)

Mr. MERRICK. Call Mr. York.

S. A. YORK, called as a witness for the respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Direct examination by Mr. MERRICK:

Q. Are you an employee of the Mackay Radio and Telegraph Company?

A. Yes.

1502 Q. When were you first employed?

A. This coming January will be eleven years.

Q. You have been continuously in the employ of the company during that period?

A. Yes.

Q. Were you present at a meeting in the Bellevue Hotel in the early morning of Tuesday, October 8th?

A. I was.

Q. Did you hear Mr. Jorgensen say anything at that meeting?

A. Well, he read off the list of eleven men. Just what do you mean, did he say?

Q. Well, I want to find out from you what he said. Your answer to my question, did he say anything, is "Yes," is it?

A. Yes. He said lots of things.

Q. Repeat as near as you can what you heard him say, first at the meeting, after the meeting had commenced.

A. After the meeting had commenced, one of the men said that he had a list to read off, and he read the eleven men and he said

their applications would have to be approved by New York and—I don't remember exactly what else.

Q. Will you try to recollect as near as you can the exact words that he used? What did he say first when he got up to speak?

A. He says, "This list, the eleven men that I will read in a
1503 minute, their applications must be approved by Mr. Stone of New York." Let me see—I can't remember the exact words that he said there.

Q. What general idea did he express, in your own words?

A. Well, he said that they would have to fill out applications, and it was understood that the applications would be sent to New York and approved by Mr. Stone before the men would be reinstated.

Q. Did he say anything about temporary or permanent?

A. Well, I think he gave the men to understand that they could come back to work temporarily, and then when the thing was gone through they would know in a few days whether they would be allowed to stay or not.

Q. That is, you think he said that the eleven men could return the same as the others, but on a temporary basis?

Mr. EDISES. I object to that question on the ground that it is leading and suggestive.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. You say he said something about "temporarily"?

A. Yes. I know he told me that I would be on a temporary basis until I was approved.

Q. When did he say that?

A. I believe that was after I was back down in the operating room.

Q. We want to first finish up with the meeting. Did he
1504 say in what respects these eleven men would differ from the others in regard to re-employment?

A. No; he didn't say. He just said that their applications would have to be approved by New York.

Q. Did he say that the rest of the men, or all of the men, could return to work?

A. Yes.

Q. What did he say on that subject?

A. That was at—Let's see—he said that everybody would be returned to work in their former positions and everything as usual as it was, except these eleven men who had to have their applications approved by New York.

Q. Was your name on the list of eleven?

A. Yes; it was on there.

Q. What did you understand you were to do, from what Mr. Jorgensen said at that time?

A. To fill out an application for re-employment or reinstatement.

Q. And when did you do it?

A. Well, there wasn't time, no time set, so I thought then was as good as any.

Q. Did he indicate whether or not if you went back at the end of the meeting you would be put back to work?

Mr. EDISES. I object to that question as leading and suggestive, Mr. Examiner.

1505 Trial Examiner EICKHOFF. Overruled.

A. Why, let's see—repeat that again, please.

Trial Examiner EICKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

A. No; he didn't. I didn't ask him and he didn't say. I was down there with the bunch of men to see what was going off and fill out the application, and so on and so forth. I didn't ask him whether I would be put back to work. I just went down.

By Mr. MERRICK:

Q. Did you assume that you would be?

A. The fact of the matter was, I was a little bit hazy. I didn't know what to expect. I herded along with the bunch to see what was coming off.

Q. Did you hear Mr. Loudermilk ask Mr. Jorgensen a question about the men on the list?

A. Well, I can't say that I did or not. There were quite a few asking him questions here and there.

Q. Do you remember hearing him answer a question in regard to the status of the men on the list, and what he said?

A. I truthfully cannot say that I did. Lots of questions were asked, but I can't remember them.

Q. Well, just let's see if we can refresh your recollection on

1506 it. Mr. Loudermilk has testified that at some time during the meeting he put a rather direct question to Mr. Jorgensen; asked him whether being on that list wasn't just the same as being fired, if it didn't mean that the men were out. Do you remember any such question being asked?

Mr. EDISES. Mr. Examiner, I want to object at this time, not only to that question as being leading and suggestive, but also to his statement of the facts. It is not my recollection that Mr. Loudermilk asked that question. It is possible that Mr. Loudermilk may have asked some similar question, but it is not my recollection that—

Mr. LIVINGSTON. (Interrupting.) We will accept counsel's correction if he will tell what Mr. Loudermilk did ask.

Mr. EDISES. I submit the proper way to go about this is to ask the witness what Mr. Loudermilk said, and not prompt him.

Mr. LIVINGSTON. On a rebuttal of a negative case you have a right to ask if a specific thing was said or if a specific thing happened. It is a perfectly proper way to do it in the trial of any case. If counsel doesn't think we stated the question correctly, asked by Mr. Loudermilk, we will be glad to accept his version. All he has to do is to tell us what he wants to say.

Examination by Trial Examiner EICKHOFF:

Q. Regardless of what the record may or may not say, did
1507 you hear Mr. Loudermilk make any such statement at that meeting?

A. I can not honest to God swear that I do. There was lots of questions and talking going on and I didn't pay any attention as to whether he said it or didn't.

Q. Was there any debate there that you do remember?

A. Well, there was no actual debate. Everybody was speaking up, and everybody talking at once, and so on and so forth. I couldn't get everybody's side of it.

Q. There is no particular argument that you remember?

A. No.

By Mr. MERRICK:

Q. Did you state that you couldn't honestly answer whether you heard Mr. Loudermilk ask that question, because you were not sure whether it was Mr. Loudermilk who asked it—but do you remember hearing anyone ask some such question?

A. I remember the question was asked and I believe Mr. Jorgensen said that he didn't say they wouldn't be re-hired, or didn't say anything—just said, "Well, your application will have to be approved by New York," and just kind of left them to suspect or think what it was.

Q. What did you do after the meeting?

A. I came down to meeting hall—I mean to the operating room with all the men.

Q. What did you do there?

A. Well, I sat around for a while and Mr. Jorgensen was
1508 busy, and finally I got a chance to talk to him. I asked him if I could fill out an application, and he said, yes; that he would get one the next day or so, and so I asked him about going to work and he says, "Yes; go back to work." And then he was busy with some other stuff and so I saw one of the supervisors and asked if I could go out to eat. I went out to eat and came back and was sitting around for quite a while waiting for more work, and one of them told me to come back at 2 p. m., and told me to go to work on the trick I had had previously.

Q. That was the beginning of your trick before the strike?

A. Yes; I had been working from 2 to 10.

Q. Did you work that trick that day, Tuesday?

A. Yes.

Q. And have been working ever since?

A. Well, not since; no. I worked that trick for a couple of days—I have been working since.

Trial Examiner EICKHOFF. When you left the Bellevue to go back to the operating room, did you know whether or not you were to be re-employed temporarily or permanently?

The WITNESS. No; I didn't know. That is why I went down there to find out.

By Mr. MERRICK:

Q. Was anything said by Mr. Jorgensen at the meeting to indicate that any men on the list of eleven had any different status
1509 from the rest of the men on that list?

A. No. The list was read as a whole.

Q. Do you know what happened to your application for reemployment?

A. Why, two or three days later I was told it was approved.

Examination by Trial Examiner EICKHOFF:

Q. How did you happen to attend the meeting?

A. Why, one of the boys was called, and he told me about it, and I came over from Mill Valley.

Q. Who was it that told you?

A. Who told me?

Q. Yes; who called you?

A. I have no phone. No one called me. Mr. Hatch called Mr. Bash and Mr. Bash came over and woke me up and I went over to his house, and I got to talking to Hatch and he wanted to know if I would get Mr. Hoxie and bring him over. So I told him it would be an hour and a half or two before I could get there, but I finally got there.

By Mr. MERRICK:

Q. Did you inform Mr. Bash on Tuesday what had taken place at the meeting and what you had done at the meeting?

A. Yes. I went back over there and told him that his name was on the list; and I told him, as far as I could remember, what happened.

1510 Q. And that you had gone back?

A. Oh, yes.

Q. Back on your regular trick?

A. Yes.

Q. What time was that, do you remember?

A. When I got back over there it was about 9 a. m.

Q. Do you remember what Mr. Bash said to you when you told him about what had taken place at the meeting?

A. Well, that would be superhuman to remember all the things.

Q. Well, we are interested only, of course, in a very few of the things. He knew about the meeting, didn't he?

A. Yes.

Mr. EDISES. I object to that question.

Mr. MERRICK. It is in evidence; he said so himself.

Mr. EDISES. I suggest you let him relate, as well as he is able to, without Mr. Bash himself.

Trial Examiner EICKHOFF. Overruled.

The WITNESS. What was the question?

By Mr. MERRICK:

Q. I am trying to get you to recall, as well as you can, what Mr. Bash said when you told him about what had happened at the

Bellevue Hotel, and that you and he were both on the list, and that you had gone back to work. Did he have anything to say about that?

A. Well, he was quite bitter toward Bob Hatch. I remember he called him a few dirty names and said he had sold him
1511 out, and lots of conversation I can't remember.

Q. Did he say anything about going back himself?

A. No; he didn't. I told him he was on the list, and he didn't seem to want to go back. I guess he understood he was not to come back.

Q. You guess he understood that. Did you tell him anything to cause him to think that?

A. Oh, no. I just told him he was on the list.

Q. Did you tell him you were on the list?

A. I told him—I gave him the list of everybody that was on the list.

Mf. LIVINGSTON. I move to strike out the "guess" as not responsive. We move to strike out the witness' guess as not responsive to any question.

Trial Examiner EICKHOFF. Let's have the question and answer.

Mr. LIVINGSTON. The question was, what was said by Mr. Bash. The witness, in the course of his statement as to what was said, said "I guess he understood," so and so. We have the right to move to strike any non-responsive answer to our question. Therefore, I make the motion.

Trial Examiner EICKHOFF. It is granted.

By Mr. MERRICK:

Q. When did you join ARTA? Do you remember, Mr. York?

A. No; I don't remember exactly. It was about two or
1512 three months after the raises were granted, the $10 raise to about 19 or 20 men.

Q. I think the testimony in this proceeding is that it was some time in July 1934.

A. It was two or three months after that.

Q. Were you an active member of the union?

A. Yes.

Q. Did you serve on a committee?

A. I was on one committee, a committee on relations. Let's see, what was that?

Trial Examiner EICKHOFF. Grievance?

The WITNESS. No; it wasn't the Grievance Committee.

By Mr. MERRICK:

Q. Administrative Committee?

A. Yes; the Administrative Committee.

Q. How long were you on that committee, do you remember?

A. I don't know. Well, I have never had any notice that I was off of it yet. It started, say about eight months ago, as near as I can remember. It started, it was some time before the agreement started to be drawn up.

Q. Did you do any particular duty during the strike?
A. Yes; I did.
Q. Were you a strike captain?
A. No; I wasn't a strike captain.

Mr. MERRICK. That is all.

1513 Cross examination by Mr. EDISES:

Q. Mr. York, what was your job before the strike?
A. I was a supervisor.
Q. And what has been your job since the strike?
A. I am an operator now.
Q. You were demoted?
A. Yes, sir.
Q. And did you get a reduction in pay?
A. Yes, sir.
Q. Did you ever ask any of the officials of the company why you lost your supervisor's job?
A. No.
Q. What was your understanding of why you were demoted?
Mr. MERRICK. I object.
Mr. EDISES. This is cross examination.
Mr. MERRICK. Not on any line that has been developed.
Mr. LIVINGSTON. Also, it doesn't call for a fact at all; it calls for his understanding. His understanding can only be based on what somebody said, or wrote, and his understanding is a conclusion.
Trial Examiner EICKHOFF. Did Mr. Jorgensen or anyone else connected with the company tell you why you were demoted?
The WITNESS. No.

1514 By Mr. EDISES:

Q. You were simply demoted after the strike without any explanation; is that correct?
A. Well, I don't remember the exact explanation. I know they had one supervisor too many, and they had two, and one of them had to go down.
Q. Who was the man who took your place?
A. Well, there——
Mr. LIVINGSTON. (Interrupting.) That is objected to on the ground that he said there was one too many, and, therefore, none took his place.
Mr. EDISES. Let's find out.
Mr. LIVINGSTON. He just said so.
Trial Examiner EICKHOFF. He didn't say who had taken his place.
Mr. LIVINGSTON. Pardon?
Trial Examiner EICKHOFF. He said—that is, he didn't say who had taken his place.
Mr. LIVINGSTON. I am trying to avoid confusing the witness. The witness testified that he was told that there was one supervisor too many; one of them had to be dropped, and he was the one. Then he was asked who took his place. That can not do anything but confuse.

Trial Examiner EICKHOFF. Who was the supervisor there after the strike who hadn't been there immediately prior to the strike?

1515 A. None. They just had too many and they had just finished the vacations, and vacations were all over, and they had all come back. There had always been one absent before that on vacation, and just at the end of the strike, why all the vacations were all over and they were all back.

By Mr. EDISES:

Q. Was there a choice between you and some other supervisor? That is, did someone other than yourself—I will rephrase that question—Who was the senior supervisor?

A. Well, the senior supervisor, the one directly below Mr. Jorgensen, is Mr. Layman.

Q. Who was the next senior?

A. Mr. Buckley.

Q. And then who?

A. Myself.

Q. And who came after you?

A. Mr. Wilson.

Q. Now, who was dropped—who, of those four was dropped? Was Mr. Wilson dropped as supervisor?

A. No, sir.

Q. He is still a supervisor?

A. Yes, sir.

Q. Was any explanation given to you why Mr. Wilson, who was your junior, was continued as a supervisor rather than yourself?

1516 A. No; I can't remember any.

Q. Do you know what the usual practice is in the H. B. office where one is a supervisor—or has to be demoted or promoted, whether seniority is taken into account?

Mr. LIVINGSTON. That is objected to on the ground that it is incompetent, irrelevant and immaterial, unless they want to file a new complaint about Mr. York. We are not accused of discrimination against him.

Trial Examiner EICKHOFF. Sustained.

Mr. EDISES. Mr. Examiner——

Trial Examiner EICKHOFF. (Interrupting.) I am not sustaining it, however, on the grounds stated by Mr. Livingston, but on the grounds we have ample evidence as to what the practice was with respect to seniority.

By Mr. EDISES:

Q. While you were in the Bellevue Hotel, up in the room in which the meeting was held, were you asked by Mr. Jorgensen to come down to work?

A. Not directly; he didn't directly say, "York, come with me to work."

He told everybody at the conclusion of the meeting, he said, "Well, let's all go down to the office and go to work."

Q. Did he make any special reference to the men on the list at that time?

A. No; I didn't hear him say anything about who was not to come or who was to come. He just said "Well, let's all
1517 go down to work."

Q. What was the—At the conclusion of the meeting what was your understanding of the status of the men on the list?

A. Well, of course, he explained that we would have to file applications, and everyone was more or less afraid that they wouldn't be approved. They didn't know what to think. I had made up my mind—well, some of them wouldn't get back, but you never can tell.

Q. Did you feel there were certain ones on the list who would have less chance of getting back than others?

Mr. MERRICK. I object to this unless he gives a basis for it.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Was anything said at the meeting or done which led you to feel that certain of the men on the list had less chance of getting back than others?

A. Well, not exactly at the meeting.

Mr. LIVINGSTON. We object to the answer to the question, "What was done at the meeting?"

Trial Examiner EICKHOFF. Well, he—Yes.

By Mr. EDISES:

Q. Was anything—What is the basis of your feeling that certain men on the list were to have a slimmer chance of getting back than others?

Mr. LIVINGSTON. We object. No such feeling testified to.

Trial Examiner EICKHOFF. Sustained.

1518 By Mr. EDISES:

Q. Well, was it your—was it your understanding at the meeting that all of the men on the list had the same chance of getting back to work?

A. Well, he said they all were to come down and file applications.

Q. Do you remember Mr. York, Mr. Martinelli questioning Mr. Jorgensen in regard to——

Mr. MERRICK. Is there any testimony in the record to this?

Mr. EDISES. Can't I ask him a question? This is cross examination. You have asked him questions with regard to the question while you had the witness on direct.

Mr. MERRICK. With reference only to what I understood to be in the testimony.

Mr. EDISES. Can't I ask him to state whether or not——

Trial Examiner EICKHOFF. (Interrupting.) I don't know if it makes any difference as to whether or not it is in the record. He didn't say anything about the record in the question.

By Mr. EDISES:

Q. Did you hear Mr. Martinelli speak to Mr. Jorgensen in regard to the five men on the list—Salisbury, Loudermilk, Rone, Bash, and Palmer—and ask him anything particularly about those five men?

Mr. LIVINGSTON. Mr. Reporter, read the question, please?

(The question referred to was read aloud by the reporter as above recorded.)

1519 A. No; I don't even remember Martinelli being at the meeting.

By Mr. EDISES:

Q. Well, do you remember any discussion at the meeting in regard to the ability or efficiency of certain of the men on the list?

The WITNESS. Discussion between who?

Q. Between Mr. Jorgensen and any of the men at the meeting?

A. No, I don't; Mr. Jorgensen was in a connecting room; I wasn't in there.

Q. Do you remember Mr. McLaughlin answering any questions or discussing in any way the efficiency or ability of various men on the list?

A. I don't remember—no.

Q. Do you remember anyone saying—asking why there should be any discrimination against those on the list who were not active in the ARTA?

A. Well, I don't remember anyone asking Mr. Jorgensen that. Of course, everybody talked among themselves and speculated as to why they had got on there, and why they were on there, and so on and so forth.

Q. Did you have any discussion with anyone in regard to why certain of the names were on the list?

Mr. MERRICK. I think he should specify what person.

Trial Examiner EICKHOFF. Let him answer that yes or no.

The WITNESS. Let's see. Ask me again.

1520 Mr. EDISES. Mr. Reporter, will you read the question?

(The question referred to was read aloud by the reporter as above recorded.)

A. Why, yes.

By Mr. EDISES:

Q. Do you remember the discussion? Who was it with?

A. Well, I can't exactly say who it was with. I believe one was Mr. Patterson.

Q. Do you remember the subject?

Mr. LIVINGSTON. That is objected to.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. You made the statement, Mr. York, that Mr. Hatch called Mr. Bash.

Mr. LIVINGSTON. He said, "Mr. Bash told him Mr. Hatch called him."

Mr. EDISES. Very well.

By Mr. EDISES:

Q. Did you mean that Mr. Bash told you that Hatch called him, or that Mr. Bash had called Mr. Hatch?

A. No; Hatch called Bash. Bash didn't know anything about it. He was asleep in bed.

Q. Do you know why Mr. Hatch called Mr. Bash?

Mr. LIVINGSTON. That is objected to. It is pretty speculative as to why one hearsay told another hearsay something else.

Trial Examiner EICKHOFF. Sustained.

1521 By Mr. EDISES:

Q. Isn't it a fact that Mr. Hatch called Mr. Bash, not in order to ask him to come to the meeting, but in order to reach someone else through him?

Mr. LIVINGSTON. Pardon me! This is objected to.

Trial Examiner EICKHOFF. Sustained. You can ask the party to the conversation about that.

By Mr. EDISES:

Q. State the conversation that you had with Mr. Bash in regard to Mr. Hatch's telephone call.

Mr. MERRICK. I don't think that is material. It certainly isn't a line that has been developed along the direct.

Trial Examiner EICKHOFF. Sustained.

The WITNESS. What was the question?

By Mr. EDISES:

Q. What was said when you spoke to Mr. Bash in regard to Mr. Hatch's telephone call?

Mr. LIVINGSTON. That is objected to.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Did Mr. Bash tell you——

Mr. LIVINGSTON. (Interrupting.) I object to that.

Trial Examiner EICKHOFF. Sustained. Do you want to contradict Mr. Bash?

Mr. EDISES. No further questions.

Redirect examination by Mr. MERRICK:

Q. Mr. York, what is the pay of a supervisor—junior supervisor?

A. Junior supervisor is $185.

1522 Q. And what is the pay of a Class A operator?

A. $180.

Q. A supervisor only gets $5 more a month?

A. Junior supervisor; yes.

Mr. MERRICK. That is all.

Recross examination by Mr. EDISES:

Q. What was the amount of reduction in pay that you had after the strike?

A. $10 a month.

Trial Examiner EICKHOFF. You are through with this witness?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. You may be excused.

(Witness excused.)

Mr. MERRICK. Mr. Burtz.

CHARLES RICHARD BURTZ, called as a witness for the respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Direct examination by Mr. MERRICK:

Q. Give your name to the reporter.

A. Charles Richard Burtz.

Q. Are you an employee of the Mackay Radio and Telegraph Company?

A. Yes.

Q. For how long have you been employed?

1523 A. I believe since last October—four years.

Q. Been in continuous employment during that period?

A. Yes.

Q. Were you present at a meeting at the Bellevue Hotel in the early morning?

A. (Interrupting.) Yes, sir.

Q. (Continuing.) Tuesday, October 8?

A. Yes.

Q. Who presided at the meeting?

A. Mr. McLaughlin, I believe, was the spokesman.

Q. Did Mr. Jorgensen say anything at that meeting?

A. Yes. He read off a list of names—eleven men who would have to submit an application for reinstatement to be approved by Mr. Stone.

Q. Are you using the language that he used in reference to them, or can you remember what he said?

A. I don't think I could repeat word for word, but that is the general impression that I got. Those eleven men would have to file an application for reinstatement for further approval.

Q. I just want to reconstruct this a little better, so you try to recollect all that he said. Who called on Mr. Jorgensen to say anything?

A. I am not positive whether Mr. Hatch or Mr. McLaughlin.

Q. Do you remember what they said when they called on him?

1524 A. They asked him if he would explain the—well, I don't know for sure. I am not positive what he was asked to do, but

I think he was asked to give a few words there in regards to the situation and in regards to the men coming back to work.

Q. But he did more than read a list of eleven names? He said more than just read a list of eleven men's names?

A. Well, I am not positive that he did; no.

Q. Didn't he say anything about going back to work?

A. Well, he didn't at that time. No; he just called off those men—that list.

Trial Examiner EICKHOFF. Did anyone say anything about this list before Mr. Jorgensen read it?

The WITNESS. Well, I think so. I believe that Mr. McLaughlin here explained the purpose of the meeting, and either he or Mr. Hatch called on Mr. Jorgensen to read off the list of men.

By Mr. MERRICK:

Q. Did either of them say that anybody could go back to work? Something must have been said by Mr. Jorgensen in reading off the list of eleven men's names.

Mr. EDISES. I object to Mr. Merrick's prompting the witness.

Trial Examiner EICKHOFF. Overruled.

1525 A. Mr. Jorgensen was in the other room; we were all in there—and the meeting—I should say, the group of men were in this room—Mr. Hatch was the first man that started talking. He suggested someone taking a voluntary—or someone appointing someone else to be chairman, and I am not sure whether Mr. McLaughlin volunteered or was appointed, but, anyway, he was the chairman.

He explained to the men what this meeting was for—whether or not we should come back to work.

Q. Did he say whether or not he had ascertained what the attitude of the company was on that point?

A. No; I am not sure that he did.

Q. Did anybody bring up that subject as to whether the company was willing to take anyone back?

A. We all weren't positive we were coming back to work. My understanding was that was what the meeting was for.

Q. Do you know whether the company would take you back?

A. I imagine they would; yes.

Q. Hadn't anybody said anything as to what the company's position was on that point?

A. You had me a bit confused for the moment. You first asked what Mr. Jorgensen said and now you ask what my opinions are.

Q. I am not asking for your opinions; only what you said.

A. I said Mr. Jorgensen didn't say anything about—I didn't—I am not sure that he did or didn't.

Examination by Trial Examiner EICKHOFF:

1526 Q. What was said about the men on this list? Were they supposed to be preferred, or why were they on the list?

A. I think I said before that those men were read off, and that those men were to be reinstated or were not to be reinstated. I don't

mean to say that, however—but they were to file an application to be passed on by Mr. Stone.

Q. Who explained that?

A. Mr. Jorgensen.

Q. Mr. Jorgensen? What did he say about all the rest?

A. Well, darned if I know what he did say about it.

Q. But you knew the men on the list were in a special class?

A. Yes; I did.

Q. You don't know what distinguished them from the rest of the men?

A. Nothing, other than that they were to be passed on by Mr. Stone and approved of one way or the other—approved or disapproved.

Q. You don't remember what he said about what the rest of the men might do?

A. No; I don't know.

By Mr. MERRICK:

Q. Did he say anything further before the meeting was over? That is, Mr. Jorgensen?

1527 A. Not that I heard him say. Immediately after he read those names from the list, he walked back into the other room.

Q. Did he come back in before the close of the meeting and say anything?

A. I might change that statement a bit. To say that after he did read those names off, I believe that Mr. Loudermilk started talking to him and arguing, if I may call it that, and challenged him, I believe, on that point—whether or not this meant that they were all through. Mr. Jorgensen answered that question by saying "It didn't mean anything like that at all."

Q. Did he say what it did mean?

A. I know—I think that is the end of it. He said that those applications would have to be sent in—that is, would have to be written out and passed on later on. He didn't state anything further, to my remembrance.

Q. Do you remember Mr. Loudermilk saying directly, "Does that mean that everybody on that list is fired, or out?"

A. Did he say what?

Q. Did he say to Mr. Jorgensen, "That means that everybody on the list is out or fired?"

A. I interpreted that as Mr. Loudermilk talking for himself there by saying that his name—as far as he was concerned that he "was out," is that right?

1528 Mr. Jorgensen answered him by saying "It didn't mean anything like that at all."

Examination by Trial Examiner EICKHOFF:

Q. He didn't say what it did mean?

A. No.

Q. Except in making the application?

A. I don't recall that he did.

By Mr. MERRICK:

Q. What did you do after the close of the meeting, Mr. Burtz?

A. What did I do?

Q. Yes.

A. Went down to the office.

Q. What happened when you got there?

A. I walked in with all the rest of the men, stood around there for a while until someone told me to go to work. I went over and sat down.

First of all I left my car parked up there at the hotel, and I asked permission to go up and get it. I went up there, drove it back, put it in a garage and came upstairs and went to work.

Q. Did you fill out an application for re-employment?

A. Yes.

Trial Examiner EICKHOFF. When?

The WITNESS. Three or four days after we were back there.

1529 By Mr. MERRICK:

Q. Did the Mackay Radio and Telegraph Company ever pay your dues or initiation fees to the union, or any part of them?

A. No, sir.

Q. Did you ever report on union activities to the officials of the Mackay Radio Company?

A. No, sir.

Q. Did you ever perform any of the functions that are usually performed by spies, or stool pigeons on behalf of the company?

A. No, sir.

Q. Were you ever asked to do so?

A. No, sir.

Q. Were you ever asked by any official of the company—that is, Mr. Jorgensen, Captain Dodd, or Mr. Rodman, or any person from New York—to do anything for the purpose of discouraging the union or membership in the union?

A. No, I never was.

Q. Did you have anything to do with the holding of the meeting at the Bellevue Hotel?

A. Well, other than calling up some men, going out and getting a few others—others that didn't have phone numbers, bring them up to the meeting.

Q. Were you at ARTA hall on the evening of Monday, October 7?

A. October 7?

Q. Wasn't it the morning during the strike?

1530 A. Yes.

Q. Do you remember anything taking place there that bears upon the holding of this meeting at the Bellevue Hotel and returning of the men to work?

Mr. EDISES. I object to that as too general and indefinite.

Trial Examiner EICKHOFF. Overruled.

A. Anything happening there?

Q. Yes; any discussion of holding of any meeting at the union hall?

A. Well, I guess there were quite a few things that might be interpreted that way.

Q. Were you present when a certain conversation took place between Mr. Loudermilk in San Francisco and Mr. Salisbury in New York?

A. Yes, sir.

Q. Did you hear Mr. Loudermilk at that time say anything about strike conditions in New York?

A. Yes; I heard him tell Mr. Salisbury that he would like to have him go back to see Mr. Stone the next morning, and to make some sort of arrangement whereby the men out here could all return to work pending further negotiations with the agreement.

Q. Did Mr. Loudermilk say what Mr. Salisbury told him as to the strike conditions in New York?

1531 A. Did he say what Mr. Salisbury told him?

Q. Yes.

A. I think he did say that. I believe Mr. Loudermilk asked him how many men were actually out, or how many returned to work. I forget which one of the questions he asked, but I heard Loudermilk repeat "Eleven men still out, or so"—words to that effect.

Q. Did you hear much discussion around the hall at that time as to whether the men should stay out on strike or continue—or go back to work?

A. A lot of discussion going on among—had been as a matter of fact, for three days.

Trial Examiner EICKHOFF. Recess for five minutes, please.

(At this point a recess was taken after which proceedings were resumed as follows:)

Mr. MERRICK. Mr. Reporter, will you read the last question and answer, please?

(The question and answer referred to were read aloud by the reporter as above recorded.)

Mr. EDISES. Mr. Reporter, I am sorry. Read the last answer, please.

(The answer referred to was read aloud by the reporter as above recorded.)

By Mr. MERRICK:

Q. Did you know whether or not the company had brought 1532 in men from out of town to work at the H. B. office?

A. Did I know for sure?

Q. Yes; at the time—at that time, or had you heard anything?

A. Oh, yes; I heard that there were men from Los Angeles working.

Q. Had you heard anything about other men coming?

A. Eight men, I believe, coming from New York.

Q. Any coming from Chicago?

A. I think there were two, rumored around, coming from Chicago.

Q. Did you express any opinions that evening at ARTA hall on the subject of whether the men should go back to work, or anything should be done about going back to work?

A. When was that, Monday evening?

Q. Yes.

A. Did I venture any opinions?

Q. Yes.

A. Not at that particular time. No—when I first got to the hall?

Q. During the course of the evening, while you were there. How long were you there?

A. I first went down at five o'clock in the afternoon. I was there for about an hour and a half, went home, had dinner, got back at eight or eight-thirty.

Q. Did you attend any informal meetings?

1533 A. Yes.

Q. Can you tell anything about what took place at any of these meetings?

Mr. EDISES. When and where, please?

Mr. MERRICK. That has already been testified.

A. At five o'clock, when I went in down there, the hall—there were several fellows out in front coming in from the street, discussing the situation about coming up to see Mr. Rodman. Quite a group of fellows standing there talking, and from the impression I got they were trying to select spokesmen for that particular meeting. For some reason or other, there was a lot of discussion going around. They decided they would call a meeting on that situation. Everybody went upstairs then.

Q. Did you go up there too?

A. Yes.

Q. What took place there?

A. Quite a bit of discussion going around. I don't remember exactly how many, but several fellows got up and made a talk in favor of going back to work; and some thought it best to wait a while and hear from Mr. Salisbury, and get more information as to just exactly what the conditions were in New York. Just a general roundhouse discussion.

Q. Any vote taken at that meeting at all?

A. Vote?

1534 Q. Yes, on the question of going back?

A. No, I don't believe there was.

Q. How did the meeting break up?

A. Well, I believe—I am not positive it was Bash—but I think Bash asked for an adjournment of the meeting, pending later information, or something along that line.

Q. Did it reconvene?

A. No, not then. It didn't reconvene at all, as a matter of fact. Everyone came down. I don't remember whether or not it was discussed there at that meeting about a phone call or not. I know I heard that Mr. Salisbury was to call back before I left the hall to go home.

Q. When did you finally leave the hall to go home?

A. Well, as I say, I got there at five, and left an hour and a half after that.

Q. The first time?

A. The first time.

Q. Then you came back when?

A. Eight or eight-thirty.

Q. Any further meetings take place after eight or eight-thirty?

A. No, not a real meeting; quite a group of men there to hear a phone call, and get the results from it.

Q. What did you do after the phone call?

A. I stood around there for a while and listened to quite
1535 a bit of discussion going around in the office. I went out there in the hall, out there where they hold the meetings, listened to a few men, went out in the hall, where I listened to a few men. Then I started down the steps to go home.

On the way down the steps, Mr. Hatch overtook me, asked me what I thought about the idea of calling the men to an H. B. meeting to vote on the situation.

Q. What did you tell him about it?

A. I told him I didn't see any objection; thought it was a good idea.

Q. What did you do then?

A. I went out in the street, out there. Hatch was with me. We stood around there for a while; Hatch started talking about the effects of the meeting and one thing and another.

"We should hold it and have a secret vote."

Mr. Jorgensen's name was brought up, I think; Mr. Hatch suggested going down and calling him, getting a list of all the names and addresses of the men, so that we could get in contact with them. I walked down to the corner of the street there. Mr. Hatch called Mr. Jorgensen.

Q. Were there just the two of you together during these conversations?

A. Yes, sir.

Q. Did you talk with Mr. Jorgensen yourself at that time?

A. Yes, I said a few words after Hatch talked. I don't
1536 remember exactly what I did say to him—but I am not so positive that it wasn't myself who asked him to bring the addresses of the men, phone calls, and I think I am the one that suggested that myself.

Q. Did Mr. Hatch tell you whether anybody—any employee of the company, or any officer of the company—had put this idea into his head about having a meeting?

A. No; he didn't.

Q. So far as you know, were you and Mr. Hatch then the ones who originated the idea?

A. As far as I know; yes.

Q. What did you do after this phone call to Mr. Jorgensen?

A. Well, we went back on the street, stood there for a few minutes, started to walk back up to the hall. I had my car parked up the street quite a ways, and Hatch told me that he had suggested to Mr. Jorgensen that he meet him at his house.

He asked me if I wanted to come out to his house.

I said "O. K."

He gave me his address and I got my car and I went up, and got my car and drove on out to his house.

Q. What did you do there?

A. Sat around, talked for a while. That is the first time I had been out there. His wife was there. I talked to her for I hadn't seen her for a few years—since she had been in Honolulu.

1537 By that time Mr. Jorgensen arrived. He had the names and addresses of all the names. He took a piece of paper, started putting down phone numbers and calls. I had a list of all the supervisors and check clerks, and I put those names and addresses down, and then, I believe, Mr. Hatch suggested holding a meeting at the Bellevue Hotel. That was agreed upon.

Q. Do you remember why he suggested the Bellevue Hotel, or any particular reason for that?

A. I don't know whether he mentioned it there or not. I know he said later, when I asked him one day about that, and he said the only reason he suggested the Bellevue Hotel was due to the fact that he belonged to an engineering association that met there monthly; and consequently he thought of the Bellevue Hotel inasmuch as he attended a number of those meetings there.

Q. Anything said at this meeting of Mr. Hatch at his house when Mr. Jorgensen was there, who was to pay for the room at the hotel?

A. No; I didn't hear.

Q. Then did you leave Mr. Hatch's house?

A. Yes.

Q. Where did you go?

A. I went home. First, I went past Mr. McLaughlin's house, and inasmuch as I didn't figure it was worth while calling

1538 him, inasmuch as I had to go right back by his place, to go home, I just went back, rank his doorbell and told him of the plan. I asked him what he thought of it and he said he thought it was all right.

Q. That is, Mr. McLaughlin?

A. Yes.

Q. The first time Mr. McLaughlin heard about the meeting?

A. As far as I know.

Q. Did you call up anybody—any of the people on your list?

A. Yes; I called all that I could get a hold of.

Q. Had you and Mr. Hatch discussed the question of who was to be chairman of the meeting?

A. No.

Q. How was Mr. McLaughlin selected chairman, do you know?

A. No; I said before that I wasn't sure whether someone appointed him or he volunteered.
Q. Wasn't anyone else nominated?
A. Yes; I was. I was asked to take it.
Q. And you declined?
A. Yes.
Q. Did you mention Mr. McLaughlin's name, do you remember?
A. I am not positive; I don't know whether or not I did.
Q. Was there any discussion as to what vote should be controlling as to whether the men would go back to work or not? That is, what percentage?
1539 A. Quite a little discussion on that.
Q. What was decided?
A. Decided that a two-thirds majority.
Q. Who counted the ballots, do you remember?
A. Well, I am not positive. I thought that Martinelli and Sam York, but I mentioned something to San about that the other day. He said it was not him at all. He said it was Jones.
Q. Martinelli and Jones?
A. Yes.
Q. Anyone question the correctness of the vote when it was announced?
A. Anyone question it?
Q. Yes.
A. No; I can't say whether they did.
Q. As far as you know, did the company have any connection whatever with the holding of this meeting at the Bellevue Hotel?
Mr. EDISES. Object to that as calling for a conclusion of the witness.
Trial Examiner EICKHOFF. Overruled.
A. So far as I know, the company had nothing to do with it.

By Mr. MERRICK:
Q. Did you answer?
A. So far as I know, the company had nothing to do with it.
1540 Q. Were you a member of ARTA during the strike?
A. Yes.
Q. When did you join?
A. Well, I don't remember the positive date.
Q. I mean, had you been a member for some time prior to the strike?
A. Yes.
Mr. MERRICK. That is all.

Cross examination by Mr. EDISES:
Q. Are you still a member of ARTA, Mr. Burtz?
A. Am I still a member?
Q. Yes.
A. Well, I don't know whether I am or not.

Q. What do you mean by that?

A. Well, I mean just that; I don't know whether I am a member or not. I suppose I am. However, I did sign a list, though.

Q. What do you mean by "did sign a list"?

A. Well, I signed a list of names that was sent around in the office shortly after our return to work. I don't know if I could choose the right words in saying, denouncing the ARTA, but not giving the ARTA certified power for representation.

Q. Who asked you to sign that?

1541 Mr. MERRICK. I object to this.

Trial Examiner EICKHOFF. Overruled.

Mr. MERRICK. This is cross examination. This list hasn't been brought in on direct. The attorney for the Board has rested.

Trial Examiner EICKHOFF. I don't know that that has any bearing.

Mr. MERRICK. It isn't a question of whether it has bearing or not. He has rested. It seems to me that he should be limited on cross examination to matters that relate to matters on direct examination.

Trial Examiner EICKHOFF. There are many other purposes of cross examination than relate to matters produced on direct examination.

Mr. MERRICK. Any questions, however, which are directed to additional evidence, it seems to me, he should state the purpose.

Trial Examiner EICKHOFF. You might defeat your cross examination if you state the purpose of it.

By Mr. EDISES:

Q. Will you answer the question?

A. Well, I don't think anybody asked me to sign this list. The first time I saw the list was 4 o'clock one evening just when I was going home. There was quite a group of men standing around. I walked up to see what it was all about. I saw that the list was

1542 quite filled up; someone suggested my putting my name down. I don't recall who it was. I looked it over, thought it over for a little while, and put my name on it.

Q. Did you consider that was a resignation from ARTA?

Mr. LIVINGSTON. That is objected to, as to what he considered.

Trial Examiner EICKHOFF. Sustained. He has testified to that.

By Mr. EDISES:

Q. When you signed that list, didn't you sign it with the intention of resigning from ARTA?

Mr. LIVINGSTON. I object; same objection.

Trial examiner EICKHOFF. Overruled.

By Mr. EDISES:

Q. Did you sign with the intention of resigning from ARTA?

A. Well, that question is a bit hard to answer. I don't know whether I did or not.

Q. Have you any grievances against any of the officers of ARTA?

A. No.

Q. Any grievances against any of the following people—Mr. Salisbury, Mr. Loudermilk, Mr. Rone, Mr. Bash, or Mr. Palmer?

A. I have none; no.
Q. Ever have any?
A. A bit.
Q. When and what were they?
1543 A. Well, there is only two fellows that I might say I had a little grievance with. Those were personal, though.
Q. Nothing to do with the union?
A. No.
Q. Were you satisfied with the way the officials of the union conducted it?
A. Am I satisfied with the way the strike was handled, or otherwise?
Q. In general, were you satisfied with the way the officials of ARTA conducted the affairs of the union?
A. Well, sometimes yes, and sometimes no.
Q. What do you mean by that?
A. Well, I mean just that. Some of the things that was done, I didn't agree to; a lot of them I did agree to, or approved of, I should say.
Q. But you had no grievance which was of such a serious nature which would lead you to consider leaving the organization, did you?
A. Well, only one time that I can remember; and I had that explained to me in short order. It wasn't anything to make a fuss about.
Q. Did you feel that the ARTA officials were doing the best that they could to win the strike for the men?
A. Well, that is a hard question to answer.
Q. Did you ever bring up on the floor at any ARTA meeting,
1544 any objection to the way in which the strike was being conducted?
A. No; I didn't personally.
Q. If you had those objections you wouldn't have hesitated to set them forth?
Mr. LIVINGSTON. I suggest that we don't have to speculate, if the Examiner please, as to what he would have done if he had something—particularly when it is cross examination, on bias, or lack of something.
Trial Examiner EICKHOFF. I think you might show that the witness' relations with the case——
Mr. EDISES. Mr. Livingston——
Trial Examiner EICKHOFF (interrupting). I think we have had some of that on direct examination, so I will permit some of that on cross examination.
Mr. LIVINGSTON. Not over objections, and I make them.
Trial Examiner EICKHOFF. Overruled.
I suggest, though, that you step this up a little bit.
Mr. EDISES. Read the question.
(The question referred to was read aloud by the reporter as above recorded.)
Trial Examiner EICKHOFF. Did you have any reason for not speaking up at the meeting?

A. No; other than the fact that a lot of these reasons were like everyone else's. A lot of speculation and rumors going
1545 around, and I thought a policy of keeping my ears open and my mouth shut would be best.

Q. Well, did you have any specific objection that you wanted to make any time, and that you didn't make?

Mr. LIVINGSTON. Objection, not proper cross examination.

Trial Examiner EICHKOFF. Sustained.

By Mr. EDISES:

Q. Did you ever try to state an objection on the floor of ARTA, and have permission refused you to do so?

Mr. LIVINGSTON. Same objection; same grounds.

Trial Examiner EICHKOFF. Overruled.

A. No.

By Mr. EDISES:

Q. Now, when did you first get the idea of having a back-to-work meeting without ARTA?

Mr. LIVINGSTON. I didn't get that. Read the question.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. LIVINGSTON. We will object to the phrase "without ARTA," because I don't know that that is in question.

Trial Examiner EICHKOFF. Sustained.

By Mr. EDISES:

When did you first get the idea of having a meeting for the purpose of getting the men back to work, not under the auspices of ARTA?

A. Well, as a matter of fact, I can't truthfully say I never had
1546 such an idea without the ARTA. It was immaterial to me where we held the meeting.

Q. When Mr. Hatch—Did you state that Mr. Hatch approached you about the idea of holding a meeting?

A. Yes; going home that evening—about calling a meeting.

Q. That was the first time you discussed holding a meeting away from the ARTA hall?

A. First time I expressed any opinion. First time I even voiced my opinion on it; I might have had ideas but I didn't express them.

Q. First time you heard anyone else express them, is that right?

A. Well, yes; that particular thing, yes. I heard a lot of discussion of having the men back to the office by various groups.

Q. You heard the discussion about going back to work, but prior to your speaking to Mr. Hatch you didn't hear anything about a back-to-work movement outside of work, is that correct?

A. Yes.

Mr. LIVINGSTON. We have heard that from the Democratic administration for years.

By Mr. EDISES:

Q. What time did you say you left the meeting on October 7?

A. Which meeting are you referring to?

Q. When you left the ARTA hall on the evening of October
1547 7, that is Monday?

A. Yes.

Q. Do you remember what time that was?

A. Well, I left it twice.

Q. The last time?

A. No; I don't know exactly what time it was.

Q. Was it around 9 o'clock?

A. Later than that.

Q. Later than that? What was the situation when you left? Isn't it a fact that the men had decided to sit tight until the following morning?

A. Well, I don' know exactly how to express that. I know that my own opinion was that the situation would not remain tight. In other words, I was struggling under the impression that before 8 o'clock the next morning——

Trial Examiner EICHKOFF (interrupting). Well, you are not answering the counsel's question, Mr. Burtz. He asked you what was the sense of this informal gathering there at the ARTA hall.

Mr. LIVINGSTON. We suggest that in answer to what the sense of the gathering is, he can only tell the sense as he saw it; and I think his answer does tell that, if the Examiner please.

By Mr. EDISES:

Q. Well, you understood, Mr. Burtz, everything was to be
1548 held until the following morning when there was to be a meeting?

A. I can't say I did understand that. That was a suggestion, as I said before—there was quite a bit of discussion going around. The feeling I had was that by 8 o'clock the next morning the men would be back to work.

Q. Who did you talk to?

A. There were several men I talked to.

Q. Isn't it a fact that you can't remember a single name of a man——

Mr. LIVINGSTON. (Interrupting.) The Examiner has prohibited creeping up on the witness. We must have the rule on both sides. I think I will ask that the Examiner admonish counsel, and ask that counsel go back to where he belongs.

Mr. EDISES. I never intend any corporeal punishment of the witness.

Mr. LIVINGSTON. That is obvious.

By Mr. EDISES:

Q. Isn't it a fact, Mr. Burtz, that with the exception of Mr. Hatch, that you didn't speak to anyone about a meeting for the purpose of

deciding whether or not to go back to work prior to ten o'clock the next morning?

A. I stated already that I was on my way home when Mr. Hatch approached me with the question.

Q. With the exception of Mr. Hatch, no one suggested the idea?

A. For calling that one meeting that night?

1549 Q. Of any meeting before ten o'clock.

A. Not a real meeting.

Q. Any kind—a gathering of any kind.

A. I told you before that it was the contention—the contention was going around there that the men would be back in the office.

Q. What was the basis of your contention?

A. I told you I was listening to various groups of men that were talking—rumors had been going around for several days, and the impression I had received there on my way home was firmly convincing me in my own mind that there would be men back up there working.

Q. But you can't remember having a conversation with a single man except Mr. Hatch?

A. I said that—Yes; I told you that.

Trial Examiner EICKHOFF. It is our usual time for adjournment. I am willing to go about ten minutes.

Mr. MERRICK. I would like to have him conclude in a reasonable time.

Mr. EDISES. Do you wish to close the session now?

Mr. LIVINGSTON. How much more cross?

Mr. EDISES. About ten or fifteen minutes, I guess.

Trial Examiner EICKHOFF. Go ahead.

By Mr. EDISES:

Q. You testified to an informal meeting on Monday, October

1550 7th, at which time the question of going back to work was discussed. Do you remember who the men were who were present at that informal meeting?

A. Just some, or all?

Q. Well, as many as you can remember.

A. Well, I can remember that there was Rone, Mr. Bash, myself, Mr. McLaughlin—I don't know whether McLaughlin was there or not, but I think that he was. Mr. Frear was there, and Mr. Spanover. Those names I remember being there because—and Mr. Poy.

Q. Did you hear any of the officers or officials of ARTA say anything which would have led you to believe that they would not permit the men to return to work?

A. Yes. I guess I can say "All right." Mr. Rone was the main defense for trying to abolish that idea.

Q. And do you remember what was said?

A. Well, not exactly. No; but there were several men got up on the floor and discussed the situation as being a lost cause and a very bad situation; and there were men coming out from New York—

quite a few already up there from Los Angeles, and Mr. Rone maintained that it wasn't necessarily a lost cause. We should wait for a while.

Q. Did Mr. Rone say he would not let the men go back to work?

A. Not let them?

Q. Yes.

A. Well, I can't remember him saying anything like that—

1551 no.

Q. Well, he didn't say anything like that, did he?

A. No; not that I remember.

Q. All right, Mr. Burtz, why did you decide to hold this meeting away from ARTA?

A. I didn't—I didn't decide.

Q. Who did decide?

A. I don't know.

Q. Did Mr. Hatch decide it?

A. I said I don't know who decided.

Q. It might have been Mr. Jorgensen or Mr. Hatch?

A. It could have been anybody.

Q. Did you hear anything said as to why the meeting should be held away from the ARTA hall?

A. No.

Q. Didn't you take it for granted that when Mr. Hatch mentioned a meeting in regard to the men going back to work, that it would be held at the union hall?

A. Did I take it for granted that it would be?

Q. Yes.

A. I don't know how to answer that question. I didn't think much about it.

Q. All the previous meetings had been held at the union hall?

1552 A. Yes.

Q. Did you ever have a union meeting anywhere else other than at the ARTA hall?

A. Yes.

Q. When?

A. When the organization was first started.

Q. Oh, but after it was started, did you ever have a meeting away from ARTA hall?

A. No.

Q. Was anything said at all why the meeting should not be held at ARTA?

A. I think there was something said about it.

Q. Just what was said?

A. A little discussion. I can't recall that. I can't say what was said; I know there was some discussion about it.

Q. As closely as you can remember?

A. Well, Mr. Hatch mentioned something about when he designated the Bellevue Hotel, that we would have it there, inasmuch as it was purely an H. B. meeting.

Q. Mr. Jorgensen was present at the time?

A. Well, I can't say positively.

Q. Did you ask any questions of Mr. Hatch or Mr. Jorgensen as to why it shouldn't be held at the ARTA hall?

A. No; I didn't.

Q. Do you remember anything being said as to—in regard
1553 to the ARTA officials at that time in connection with the question of holding the meeting at ARTA hall?

A. At what time?

Q. You have testified that at Mr. Hatch's house, I believe, the question came up as to where the meeting was to be held.

A. Yes.

Q. Was anything said about the ARTA officials in connection with that statement?

A. I can't recall that there was anything definite said about it at that meeting.

Q. Was anything said as to why it shouldn't be held at ARTA hall?

A. I can't say that I remember—but I know Mr. Hatch suggested the Bellevue Hotel.

Q. You understood you were throwing ARTA over at that time?

Mr. MERRICK. I object to that.

Mr. EDISES. He knows what it means.

Mr. MERRICK. So do I.

Mr. LIVINGSTON. That is objected to as not proper cross examination, assuming something not in evidence.

Trial Examiner EICKHOFF. Sustained. You can rephrase that and get the same information.

By Mr. EDISES:

Q. Well, you were aware if the meeting was held at the Bellevue, that the union would be out of the picture, weren't you?

1554 A. No, I had no such understanding as to that.

Q. Didn't the fact that it wasn't being held at the union hall, and a number of the union leaders were not to be asked to attend the Bellevue, lead you to suspect that it was to be held without the benefit of ARTA?

Mr. LIVINGSTON. Just a moment please. I didn't hear you?

Mr. Reporter, will you read the question?

(The question referred to was read aloud by the reporter as above recorded.)

Mr. LIVINGSTON. No objection.

A. I don't know exactly how to answer that question, because, as I said before, I didn't have any understanding that those men weren't to be asked. I had a list to call; that is all I know.

Q. Was anything said about not calling them?

A. I didn't hear anything said about not calling anybody.

Q. Was it your understanding that everybody was to be called?

A. Yes.

Q. You knew that eleven men were not to be called?
A. I didn't know that at that time.
Q. Did Mr. Hatch say anything to you about not calling some of the men?
A. Nobody said anything to me about not calling anybody.

1555 Examination by Trial Examiner EICKHOFF:

Q. Where did you get the list that you used to phone the men?
A. Out at the house.
Q. Did you prepare it yourself?
A. The names were read off. I had one piece of paper there. I wrote down the phone numbers and the names of the supervisors and check clerks.
Q. You didn't take one page of Mr. Jorgensen's list?
A. No, I just wrote down the names as they were called off.

By Mr. EDISES:

Q. Were you active in the union, Mr. Burtz?
A. I was active to the extent that I attended quite a few meetings.
Q. Ever serve on any committees?
A. No.
Q. Never an officer, were you?
A. No.
Q. Did you speak to Mr. Jorgensen when he arrived at Mr. Hatch's house?
A. Yes.
Q. Do you remember what was said?
A. No, I can't remember the conversation exactly.
Q. What did you talk about?

1556 A. Well, we talked mostly about having a meeting and asking all the men there to vote.

Q. Well, can you give me any of the details of that conversation? You have indicated the subject. Can you tell me anything about the conversation itself?
A. Yes, I recall to the extent that I asked him if we got all the men to go—asked them to vote, that if he would be willing to make a statement to the effect that we could return to work as we walked out—walk in and take our seats as if nothing had happened.
Q. What did he say to that?
A. He didn't say much about that. We put the list on the table.
Q. What list?
A. The list of the men and addresses.
Q. Did you see him check off any of the names on the list?
A. No, I didn't see him check off any of the names.
Q. What else was said? Go ahead.
A. Well, I don't remember. There was quite a bit of conversation of various things.
Q. Did you ask him if there were any strings to coming back?

A. Did I ask him if there were any strings to coming back?
Q. Yes.
A. Well, I said if we could get the men to go, and if you would be willing to address the group—to come back as we went out—if we could depend on that.
1557 Q. What did he say to that?
A. Absolutely, we could do that.
Q. What did Bash say to that suggestion?
The WITNESS. Well, he didn't make any right at that time—no; we went in and sat down and started to read off the lists of names. I believe there was something mentioned to the effect that there was quite a few men not here—good men in the office that he would like to retain, that were up there working—strike breakers. Also, that he had some few incompetent men and he was going to check off some.

By Mr. EDISES:
Q. He said that there were some few incompetent men checked off?
A. That is the impression I received.
Q. That was the impression you received?
A. Yes.
Q. Did you leave the room at any time while Mr. Jorgensen was at Mr. Hatch's house?
A. Did I leave the room?
Q. Yes; and leave Mr. Hatch and Jorgensen by themselves?
A. Yes; I think I did. I went in and got my overcoat and left.
Q. Was that the only time you left them alone?
A. That is the only time I remember.
Q. Did you see Mr. Jorgensen out of the room at the hotel?
1558 A. No; as a matter of fact, I wasn't there when Mr.—
There was quite a few people at the hotel when I arrived—I might say that. I left Mr. Jorgensen and Mr. Hatch at his house and started home; and went by and saw Mr. McLaughlin. In the meantime, when I got there, I believe, there was one or two other people—other fellows there. I know Hatch was there.
I went on in there and I made a few calls.
Q. Did you pay for the phone calls you made?
A. Yes.
Q. Ever get reimbursed for them?
A. No.
Trial Examiner EICKHOFF. Mr. Hatch didn't give you any money later?
The WITNESS. Now—Let me see! I don't recall that Mr. Hatch gave me any money later.

By Mr. EDISES:
Q. Did he give you any money at the time?
A. No; not at the time.
Q. Have you attended any meetings of ARTA since the strike?

A. Yes.

Q. And did you take part in those meetings other than mere attendance?

A. No. Well, yes; I did one. I went down to a meeting—down there myself to answer a few charges that I had heard rumored against me.

1559 Q. What were those charges?

A. Mostly that I sold out my fellow workers.

Q. What was your position in regard to that?

A. I didn't feel that that charge was justified. I went down to explain my stand on that.

Q. What was done at the meeting in regard to the charges?

A. I asked for the floor to give my statement uninterrupted.

Q. Was that granted?

A. Yes; I told them my actions from start to finish—and went right ahead and finished it up.

Q. Were you charged with having conspired with the company to get the men back to work?

A. Well, I don't know if just in those words. Sort of insinuated that I might be a sort of double crosser; yes.

Q. What was your response to that charge?

A. I called the man that made that charge a damned liar.

Q. What else did you say?

Mr. LIVINGSTON. Isn't that enough?

By Mr. EDISES:

Q. What else did you say in your defense?

A. What else did I say?

Q. Yes.

A. A few blows were struck.

Q. What else?

A. What else?

1560 Q. Yes.

Mr. LIVINGSTON. I still say, isn't that enough?

A. I can't say anything radical happened after that.

By Mr. EDISES:

Q. Isn't it a fact, Mr. Burtz, that you took the position at that meeting that you hadn't done anything intentional in connection with the sell-out?

A. Yes.

Q. But that you had, without your knowledge, been made use of by the company?

A. I didn't admit anything like that; no.

Q. What did you admit?

A. I said, as far as I knew, the company hadn't any participation in that meeting—as far as I was concerned. That, if I had been used as a company tool, it had been done so with my ignorance. I didn't know anything about it.

Q. Was any resolution passed at that meeting in regard to your conduct?

A. Yes.

Mr. LIVINGSTON. Now, we'll take the minutes. The minutes will be the best evidence.

Mr. EDISES. How do you know that it is in there?

Mr. LIVINGSTON. Well, if they are not, heaven help the organization.

Trial Examiner EICKHOFF. Was there a resolution censuring your conduct?

1561 Mr. LIVINGSTON. We object to that on the grounds that the minutes are the best evidence.

Trial Examiner EICKHOFF. Overruled.

The WITNESS. Do you mean—do you mean that I was outlawed for my conduct?

Trial Examiner EICKHOFF. Criticising your conduct?

The WITNESS. Yes; there was quite a bit of that. I don't recall any resolution being passed on that. There was quite a few fellows spoke on that subject and a few spoke on the other behalf. It finally wound up by a vote taken as to whether or not I should be found guilty or not guilty of those charges.

By Mr. EDISES:

Q. Did you express any regrets over your conduct?

Mr. LIVINGSTON. We are compelled to demand the minutes now. I can't even follow the questions. I don't know if any took place. I insist we have the minutes. Let's have a look at them.

Mr. EDISES. I think you are going to get your wish, Mr. Livingston.

Mr. LIVINGSTON. That's swell.

(Counsel Livingston examines minutes of meeting.)

By Mr. EDISES:

Q. Can you identify this document, Mr. Burtz? [Handing minutes to witness.]

1562 Mr. LIVINGSTON. If the Examiner pleases, I ask that the only person who can identify documents legally is the person who made them up.

Mr. MERRICK. He was asked a question to identify this document. He doesn't know if he has ever seen those or not.

Trial Examiner EICKHOFF. Let him answer the question.

Mr. LIVINGSTON. No witness can be asked a legal conclusion as to identification of documents not prepared by him——

Trial Examiner EICKHOFF (interrupting). How do you know?

Mr. LIVINGSTON. Because I know my law; I will show you the rule. And I ask that the Examiner admonish the witness——

Trial Examiner EICKHOFF (interrupting). I disagree. I will not admonish the witness.

Mr. LIVINGSTON. All right. I will object to the question on the grounds it calls for the conclusion of the witness.

Trial Examiner EICKHOFF. Overruled.

Mr. LIVINGSTON. Very good.

By Mr. EDISES:

Q. Do those minutes represent, Mr. Burtz, as far as you know, the substance of what took place?

Mr. LIVINGSTON. That is objected to as calling for a conclusion of the witness.

Trial Examiner EICKHOFF. Sustained. The witness hasn't answered the question as to whether he can identify that or not.

1563 The WITNESS. Do you mean by that, have I ever seen that document before?

Trial Examiner EICKHOFF. Do you know what they are?

The WITNESS. Yes; I think I do. I would say the minutes of what took place at the meeting.

By Mr. EDISES:

Q. Have you any corrections, changes, or additions to make to those minutes?

A. Well, other than this right here [indicating on minutes], "Salisbury had promised Burtz this opportunity at this meeting."

This particular meeting which we had—Previous to that I had asked Salisbury to have an H. B. meeting. We would have this meeting called on neutral grounds.

Q. Neutral grounds?

A. Yes.

Q. What do you mean by that?

A. I meant by that that after Salisbury had told me how most of the fellows felt about it—about the attitude I had taken down there at this meeting, that they more or less looked upon me as being a company man; and that consequently—in other words, I was more or less——

Q. (Interrupting.) An outcast?

A. (Continuing.) An outcast among my fellow workers.

Q. But you finally did accept the invitation to come down to the meeting?

A. Yes.

1564 Q. Do those minutes represent——

A. (Interrupting.) I haven't finished it all.

Mr. LIVINGSTON. That will be objected to on the ground it is incompetent, irrelevant, and immaterial and not proper cross examination. It is the minutes of a meeting of October 8th, and I can't see what that has to do with the direct—or lack of memory or anything of the kind. Therefore it is not proper cross examination.

Mr. EDISES. It seems to me you are very inconsistent.

Trial Examiner EICKHOFF. If the witness had been rebuked, it might have been some evidence of cause.

Mr. LIVINGSTON. But he hadn't. That is the point of my objection.

Mr. EDISES. Mr. Livingston, first you demand the minutes; then when I offer them you object to them.

Mr. LIVINGSTON. I am afraid counsel doesn't follow me. I demand the minutes that we may get the best evidence. Then I object to

them on the ground they are utterly incompetent, irrelevant, and immaterial, because they have nothing to do with the case or the direct.

Mr. EDISES. You concede that these are the best evidence?

Mr. LIVINGSTON. Yes; I don't make any objection there. I renew my objection on the grounds that this document doesn't enter the case at all.

1565 Trial Examiner EICKHOFF. I don't know what is in them.

By Mr. EDISES:

Q. Do you have any changes or additions or corrections to make to the account contained in those minutes, Mr. Burtz?

A. Well, I couldn't object to this paper here very seriously; no.

Q. It contains a statement of what occurred at that meeting, as far as you can recollect?

A. Well, there are a lot of things in there not related, but on the other hand, they are not of great importance.

Mr. EDISES. I offer this in evidence——

Mr. LIVINGSTON. (Interrupting.) May I ask the witness one or two questions on voir dire before we object to the document itself?

Trial Examiner EICKHOFF. Yes.

Examination on voir dire by Mr. LIVINGSTON:

Q. You say what is in the minutes is substantially correct?

A. Yes.

Q. But there are other things that occurred that aren't in the minutes?

A. Well, a lot of those things—it is very brief, I might say.

Q. You mean there is a lot more that took place that isn't in there?

Mr. EDISES. Don't lead him. If you want to ask him a

1566 question——

Mr. LIVINGSTON. I am satisfied.

Mr. EDISES. I am not. I object to it.

Trial Examiner EICKHOFF. He is cross examining the witness on the document.

Mr. EDISES. I object.

The WITNESS. Well, I didn't recall seeing anything in there about a fight, or so-called fight—a few other things passed here and there.

Trial Examiner EICKHOFF. So far as the business proceedings of the meeting are concerned, this is substantially correct?

The WITNESS. Subsequently correct; yes.

Mr. LIVINGSTON. All right. That will conclude our objection. We will object to the document upon the grounds, first, it is not proper examination; second, it is remote; third, it is incompetent, irrelevant, and immaterial.

Trial Examiner EICKHOFF. Now, I will reserve a ruling on this until tomorrow morning. It is getting late. I want to read them more carefully.

I think we had better adjourn. You can't finish in three or four minutes?

Mr. EDISES. I simply wanted to introduce this and possibly——

Mr. MERRICK. (Interrupting.) I wish it could be concluded. Mr. Examiner, because this witness has been assigned to duty in the morning.

1567

Trial Examiner EICKHOFF. No; but we are a half-hour late now.

Mr. MERRICK. I have no questions to ask, so if he has only one or two, let's get it over with.

Mr. EDISES. I am willing to cut my examination short.

Trial Examiner EICKHOFF. I'll rule on the document in the morning. You can ask him questions on the document now, if you wish.

Mr. EDISES. I have no further questions in regard to the document, or anything else.

Trial Examiner EICKHOFF. Or anything else?

Mr. EDISES. No.

Trial Examiner EICKHOFF. Then this witness may be excused?

Mr. MERRICK. Yes.

(Witness excused.)

Trial Examiner EICKHOFF. Then we'll adjourn until ten in the morning.

(Thereupon, at 4:30 o'clock p. m., the hearing in the above-entitled cause was adjourned until 10:00 o'clock a. m., Tuesday, December 17th, 1935.)

1568 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Tuesday, December 17, 1935.

Met pursuant to adjournment at 1:00 o'clock a. m.

Colloquy

Trial Examiner EICKHOFF. Are you ready, gentlemen?

Mr. MERRICK. Yes, Mr. Examiner.

Mr. EDISES. Ready.

Trial Examiner EICKHOFF. Mr. Edises, do you wish to renew your offer of the copy of the minutes of November 8th?

Mr. EDISES. In view of the fact that the witness has testified to certain matters that went on at that meeting, I feel that it is proper to introduce in evidence the minutes of that meeting as the best evidence of what occurred.

1569

Mr. MERRICK. I object, of course, on the ground that whether or not it is the best evidence, that whatever took place at that meeting, is wholly irrelevant and immaterial and has no place in the record in this case.

Trial Examiner EICKHOFF. I will admit it on the grounds stated by counsel for the Board, and for no other purpose.

Mr. MERRICK. Even though the questions that were asked him as to what took place at the meeting were over objections by counsel for the Respondent, since they were admitted by the Examiner, he now feels that having made one error, he should add another one?

Trial Examiner EICKHOFF. I do not feet I made an error at all.

Mr. MERRICK. I don't see why you admitted it for the reason that he asked the witness questions about what took place in the meeting. Either it stands on its own feet, or it has no place at all.

Trial Examiner EICKHOFF. I allowed the questions over your objections as to what took place at the meeting, and you immediately took the position that the minutes themselves were the best evidence. It is entirely consistent, if I allow any testimony concerning the meeting, that I should allow the minutes to go in.

1570 Mr. MERRICK. I see what you mean. I thought you meant merely because you had allowed testimony of the meeting, now you feel you should allow the best evidence of what took place at the meeting.

Trial Examiner EICKHOFF. To complete and fill out the testimony which went in, but not giving it any binding effect, attaching any particular weight to it.

Mr. MERRICK. I ask that you rule this exhibit is admitted for the sole purpose of attacking the credibility or the truthfulness of the statement that the witness made in regard to the meeting, and not for any evidence of what actually took place at the meeting itself.

Trial Examiner EICKHOFF. The meeting itself is interesting to show the relationship of the witness with the union and through the union with the men for whose benefit this proceeding is brought. Now, not until the evidence is in and it is all connected up, will we know whether it has any probative force.

It will be admitted and marked as Board's Exhibit No. 20.

(The minutes referred to were received in evidence and marked "Board's Exhibit No. 20.")

Trial Examiner EICKHOFF. I have before me an amended complaint, which Mr. Edises has handed me. I presume a copy has been served on you, Mr. Merrick?

1571 Mr. MERRICK. Yes; I have received a copy.

Trial Examiner EICKHOFF. Is there any objection to the filing of the amended complaint at this time?

Mr. MERRICK. No objection.

Mr. EDISES. In regard to an answer, I presume that the answer to the original complaint may be deemed to apply to the amended complaint?

Mr. MERRICK. I hadn't really thought much about that. They usually don't amend an answer where a complaint is amended during trial in order to conform to proof. It isn't usually considered necessary, as I understand it.

Trial Examiner EICKHOFF. I think it is in this jurisdiction.

Mr. MERRICK. It is?

Trial Examiner EICKHOFF. If you have no objection, it might be stipulated that all of the material allegations of this amended complaint be deemed denied by respondent.

Mr. Merrick. Yes. I would appreciate that, except for the few admissions that are contained in the answer, and they would also naturally apply to the amended complaint.

Trial Examiner Eickhoff. Yes. That is so stipulated?

Mr. Edises. So stipulated.

Trial Examiner Eickhoff. The amended complaint will be considered filed, being nunc pro tunc and as of the time prior to
1571-A Respondent's motion to dismiss upon the close of the Board's case.

I am going to ask, Mr. Edises, that you supply the reporter with a copy of the amended complaint, and I will keep this copy in my file.

(Thereupon counsel Edises handed the reporter a copy of the amended complaint for the file of the Board.)

Mr. Edises. I presume that Respondent will not feel he is prejudiced by the omission from the amended complaint of the notice of the time and place of the hearing.

Mr. Merrick. Correct.

I will call Mr. McLaughlin.

A. M. McLaughlin, called as a witness for the Respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Direct examination by Mr. Merrick:

Q. Are you an employe of the Mackay Radio and Telegraph Company?

A. I am.

Q. How long have you been in that company's employ?

A. I was first employed as an extra in 1926.

Q. Have you been continuously in the employ of the company since that time?

A. No; I left the Mackay Radio in 1928 and went with the Radio Corporation of America, and returned to Mackay Radio in 1929.

1572 Q. Then your service has been continuous with the Mackay Radio since 1929?

A. Yes.

Q. When did you first hear about the strike that took place on the night of October 4th to 5th?

A. About 9:30 or so Friday evening, the 4th, while on duty. Captain Dodd came in the operating room and asked me if had heard any rumors going around. I told him that I hadn't heard anything. That was my first information that anything was going to happen.

Q. Did he tell you at that time that the strike had been called? When did you first hear definitely that a strike had been called?

A. Monday afternoon after returning to town.

Q. You didn't know anything about it that night?
A. Not definitely.
Q. When did you leave the H. B. office Friday night?
A. Sometime between 10:30 and 11 p. m.
Q. What was your trick that night?
A. From 4 until midnight.
Q. How did you happen to be leaving before midnight?
A. I had arranged for an early relief approximately a week ahead of time to go to Vallejo. It was my anniversary week end and I wanted to be with my wife.
Q. When did you leave town that night?
1572–A A. On the 11:50 bus.
Q. When did you return?
A. Around 2:15 or so Monday afternoon.
Q. During the period that you were out of San Francisco did you have any communications with representatives of the company?
A. No.
Q. Any communications with representatives of the union?
A. No.
Q. What happened when you returned Monday afternoon?
A. Well, having known that, or heard that something was going to happen, I called up the office on the telephone and asked for Mr. Jorgensen. I couldn't get him, so the telephone operator asked me if I would speak to Captain Dodd. I said "Yes."

I asked Captain Dodd what the situation was, and he told me about the strike; every one was out of the office except Mr. Jorgensen, Mr. Irish, Mr. Marx, and that there were a few men up from Los Angeles that were keeping the circuits going; otherwise every one was out. He told me he would appreciate it very much if I could come down to work.

Do you want me to continue with the conversation?
Q. Yes.
A. I told him I would very much like to come to work, and I
1573 didn't like the idea of going out; and I couldn't afford to lose my job.

He explained to me that the rate of pay during the strike would be straight time for the eight hour trick, double time for overtime, and half time for sleeping time; that the men who were working were staying in the building and sleeping there during their off time.

I told him I would like very much to come down; that I would think it over, but it was a hard decision to make.
Q. That is the end of that conversation?
A. Yes.
Q. What did you do?
A. Well, that was about 2:30. I was hungry. I started for a restaurant and I met Mr. Stocklin on the street. He asked me if I had been down to the office yet. I said, "No." Then he explained to me the situation, how many men were working, that the fellows had

come up from Los Angeles to fill positions, and that some of them had been talked to or discouraged, that their viewpoint was changed, and they had gone back to Los Angeles; that they were figuring on talking to the rest of them, if possible, and try to get them to go back, too.

We talked in general, personal conversation, and then broke up.

Q. Did you go back to work?

A. No. I had my lunch and then I went down to the office
1574 with the intention of going up to work, and a picket stopped me on the corner. I talked to him and told him I didn't know what to do.

I intended working, and two or three more of them came across the street and talked to me and asked me to go over and talk it over and see Mr. Layman and Mr. Buckley, who were on the other side, and that they could tell me about it.

Q. They were supervisors?

A. Yes.

Q. And you were a supervisor?

A. I was; yes.

So I went over there and talked. I couldn't make up my mind. Buckley finally told me that he considered it best for me to stick around and see what was going to happen; that the way the fellows felt and talked, that it was just about life to go to work; that they were talking about baseball bats.

I stood there and talked awhile, and I heard all kinds of different rumors. So I told the fellows, "Well, I am going down to ARTA hall and see what it is all about."

Q. Did you go down there?

A. I did.

Q. What took place there? About what time did you get down there?

A. About 4:15 or 4:30.

1575 Q. And what happened there?

A. I read the bulletin board, the messages posted on it, about the information in New York.

Q. Was that favorable?

A. One message stated certain conditions in New York, and then it said, "Don't pay any attention to M. K. weakness because we didn't count on them anyway."

Well, I immediately wanted to know what was meant by "M. K. weakness." I could get no definite information. So Mr. Bash was there, and I started talking to him about it. I think Spanover was there, Beebe, and Chambers. I remember Ludlam, but I am not sure whether he was there at that time.

We were talking there, and finally Bash didn't produce any evidence to show what the M. K. weakness was, but he made the statement to us, as nearly as I can recall his words, that "Well, fellows, M. K. has fallen down on us, left us holding the bag. The only thing we can do is to try to straighten it out at this end."

So they talked it over about what they should do, and decided some one should go up and see Mr. Rodman about reinstatement.

So it was decided that Spanover would be the one——

Q. (Interrupting.) Do you know—excuse me.

A. (Continuing.) Because he stated that he had been through
1576 the picket lines two or three times and thought he could do it again.

Q. What did Bash say to that suggestion?

A. So we went downstairs in the hallway and talked some more, and as Spanover was leaving, Bash said, "Now, Jack, when you see Mr. Rodman be sure and tell him that I was not the ring leader; that I only obeyed orders in this matter."

At that time Clifford came in and wanted to know what it was all about. He started the argument all over again, and before that argument was finished, Rone came in.

Rone objected to the proceeding because it wasn't legal; that to do anything like that they must have a regular meeting of the union.

So they decided to have a meeting. We all went back upstairs to the hall and runners were sent out to call in all those who were still on the street; they even called the pickets down by mistake.

Mr. EDISES. Mr. Reporter, will you read the last sentence of the answer?

(The last sentence of the answer referred to was read aloud by the reporter as above recorded.)

By Mr. MERRICK:

Q. Was there a meeting held then?

A. Yes. Bash finally called the meeting to order. He was the official chairman.

Q. About how many were present?

A. Approximately 30.

1577 Q. Go ahead.

A. Bash changed his mind, apparently, about calling the strike off. He used the gavel on the table and asked the men whether they thought they were on a picnic or a strike. He stated that most of the young punks had never been in any situation such as that before, and that the only thing that they could do to win or bring the strike out favorable to them would be to stop the scabs arriving from New York from getting into the office in the morning to go to work.

I believe Mr. Spanover got up and spoke, told them his views on the situation, and that he didn't think they had a chance of winning the strike.

Then I asked for the floor and told them that I had something to say, and I now would like to say it but I wouldn't unless I had permission to finish what I wanted to say before being interrupted. I received that permission.

I proceeded to tell them my views; that since there were anywhere from seven to ten men working in the office at that time,

and seven coming from New York and two from Chicago in the morning, that it would be approximately enough men to run the main circuits in the office; and if they waited long enough for them to get that many men in the office, it wouldn't make much difference to the company whether the men were on strike or not; and that I thought if they wanted to retain their jobs, or go back to
1578 work, that they would have to make a decision immediately.

To emphasize my point about how many men were needed in the office, I took a piece of paper from Mr. Bash's desk and wrote down on it the number of necessary circuits that had to be run, and how many men were needed to run those circuits.

Q. Do you remember what circuits they were, what circuits did you say were necessary?

A. The New York circuit, the Tokio circuit, the Shanghai circuit, the Honolulu and Manila circuits.

Q. How many men did you figure would be necessary for those circuits?

A. Approximately 20 men.

Q. Did you say what you thought the company would do in regard to the remaining circuits?

A. Yes. I said if they didn't have enough men they could close out the coastwise circuits and let the Postal handle them.

Q. The Postal; meaning by that the Postal Telegraph Company?

A. Yes.

Q. An associated company?

A. Yes.

Q. With operating rooms in the same building?

A. Yes.

Q. Is that all that you remember that you said?

1579 A. Yes—no; I will contradict myself. I asked the men while I was on the floor, just how many of them could afford to stay out on a strike for a week. I got no replies.

Q. Did Mr. Rone say anything at that meeting?

A. Yes. After I spoke, Mr. Rone got up and said to the meeting that he would like to call their attention to the two speakers who had just spoken; one of them, as they all knew, had been a militant member of the union, but the other was a newcomer and prior to this newcomer's membership in the union they had no dissenting words or actions at any meetings. And he stated that they would have to guard against boring from within.

Q. Did he say which persons he had in mind when he talked about the newcomer and the other one?

A. Yes. I resented this speech and I asked him to explain it; that I didn't like to be referred to in any way like that.

He told me that he wasn't referring to me; that he had spoken of me as a militant member of the union.

Q. Who was the other one?

A. Mr. Spanover.

Q. Was there any discussion at that meeting in regard to the National Labor Relations Act?

A. Yes. Mr. Rone said that he thought that all we had to do was to sit tight and the company would have to come to the union
1580 for negotiations; that, I believe it is the Wagner Bill, stated that the employer had to recognize and negotiate with any union. He called upon Mr. Martinelli to back him up in that statement.

Q. Who was Martinelli?

A. Martinelli is an attorney, and he had been acting in an advisory capacity, I believe, for any legal things that came up in the union meetings.

Mr. Martinelli stated that he hadn't had time to study the Bill, but he had it in his pocket and would read it then. He took time to read over certain paragraphs in it, and he finally stated that, after reading it, he could see no teeth in the bill whatsoever.

Q. Did Mr. Clifford say anything at this meeting?

A. Yes. During the general discussion about whether we should go back to work or not, Mr. Clifford got up and stated that if any of us felt like going back to work, or all of us, that if we went back to work before the strike was settled favorably, that he would not go back to work with us; that he would not acknowledge knowing us or ever speaking to us again, because any one who would go back to work that way were a bunch of rats.

Q. Was there any vote taken at this meeting, or any definite conclusions of any kind?

A. No.

Q. Did anybody ask for a vote?

1581 A. No.

Examination by Trial Examiner EICKHOFF:

Q. What time was this meeting, and on what day?

A. Monday afternoon. The meeting was called approximately at 5:30 or so.

Q. Was it decided at that time that there would be another meeting the following morning at 10:00 a. m.?

A. I believe there was something said about that; yes.

Q. Do you recall about that decision?

A. I believe when the meeting broke up there was something said about making no definite moves until the 10 o'clock meeting in the morning.

By Mr. MERRICK:

Q. That is, that was the regular meeting that took place every morning, as you understand it, during the strike?

A. I had heard there was a meeting every morning at ten o'clock during the strike.

Q. What did you do after this meeting broke up?

A. Well, I left the room and went outside and started down the steps, and I looked around and I found myself alone on the stairway.

I went downstairs and started walking up the street, and I saw two fellows in front of me, so I caught up with them. It was Spanover and Mr. Horstmeyer.

1582 So we started talking. Some one said, "Well, what will we do now?" None of us had any definite plans.

So Spanover said, "Come on back and get in my car." We walked back to the corner of ARTA hall and Spanover's car was parked there. We got in it and sat there for half an hour or so talking the situation over.

We finally moved out and drove around in front of the office building, Mackay Radio, and when we got around there, Mr. Poy and Mr. Belding was on picket duty. So we stopped there and started talking to those two.

Q. Was anything important said during that conversation, do you think?

A. No.

Q. What did you do after that?

A. Spanover and Horstmeyer and myself rode around out of Market and over Third and out around the Mission and out to the Beach. We had hamburgers and coffee.

Q. What were you discussing?

A. The meeting down there, everything that came up, and they wanted to know if we should do anything more. And I said no; that if anything was going to be done—I had done all I could—and if I didn't say enough, it was too bad, and if I did say enough, the fellows would take it up themselves.

Q. Did you three decide to do anything at that time?

1583 A. No.

Q. After you had had your refreshments, what did you do then?

A. We left. Spanover drove me back to my corner, at 9th and Fulton Street, and told me later that he continued down to the Ferry Building.

Q. We don't care what he told you about later. You got off there, and what did you do then?

A. Went home.

Q. About what time did you get home?

A. Somewhere around ten or a little later.

Q. I want to go back to that meeting just once more. Do you remember having a paper at that meeting and exclaiming that you had some information there that you read from and refused to let anybody see it when they asked to see it?

A. No. The only paper I had in my hand, I believe, was the one I wrote the names of the circuits and the number of men that had to be in the office to run them.

Q. Did you discuss any information that you had as to the situation in New York, at that meeting?

A. No; I had no such information.

Q. You don't remember anybody's asking you to show them a piece of paper you were reading from, and your refusing to do it?

A. Asking me? No.

1584 Q. Did you sleep peacefully that night?

A. Not very long. After talking to my brother-in-law an hour or so, we decided to go to bed. I had no more than got nicely settled in my bed until the doorbell rang. I answered the door and it was Burtz. He told me they were having a meeting down at the Bellevue Hotel, and I asked him when. He said, "Right away." He told me, "It is a meeting of the gang themselves, the H. B. operators.". He asked me if I could come down.

I said, "Yes. Are you going to wait for me?"

He said, "No; I am in a hurry."

I said "All right." So I got dressed.

Q. Was that the first time you had ever heard about the holding of a meeting?

A. Yes.

Q. And you went to the meeting?

A. Yes.

Q. What time did you get there?

A. Oh, sometime between 11:30 and midnight.

Q. What did you do there?

A. I got in the hotel and I looked around the lobby. I saw Mr. Burtz, Mr. Hatch over in the telephone booth telephoning. I went over and stood there and tried to listen to them, but they were inside the booths.

Q. Did you do any telephoning?

A. Nothing; no.

1585 Q. You didn't call any-one?

A. No, not at that time.

Q. Well, did you before the meeting?

A. About 3 a. m., or thereabouts, up in the room where the meeting was held some one said that it might be—that there might be some fellows down at the ARTA hall. So I got the phone number and called up down there, and Mr. Beebe was there. He answered the phone and I said to him, "Hello, Beebe. What do you think about going back to work?"

He said, "It sounds fine to me."

I said, "Well, we are having a meeting up at the Bellevue Hotel and if there is any one else down there, come on up."

Q. Is that all that was said?

A. That is all.

Q. What time did the meeting formally start, do you remember?

A. No, I couldn't say.

Q. About what time?

A. I should say it started around 4:30 to 5 o'clock.

Q. How did it start?

A. Well, after we decided that just about every one was there that we could get hold of, Mr. Hatch asked Burtz if he would act as chairman. Burtz declined the position.

Then Hatch said, "How about McLaughlin?"

1586 I didn't decline it, and they all agreed it would be all right.

Q. Had you discussed the matter of being chairman with anybody prior to the meeting?

A. No.

Q. Was it a surprise to you that you were named as chairman?

A. Yes, it was.

Q. What did you do after you—you were acclaimed chairman, I take it; is that it?

A. Well, since it was the first time that I had ever acted in any such capacity, I didn't exactly know how to go about it. I believe I told them that it was my understanding of the meeting that it was to get the H. B. operators all together and make a decision of whether they wanted to continue the strike or go back to work.

Q. Did you say anything about whether the company had been consulted, whether they were willing to take the men back?

A. No.

Mr. EDISES: Will you read the last question and answer, please?

(The last question and answer were read aloud by the reporter as above recorded.)

By Mr. MERRICK:

Q. Did you ask Mr. Jorgensen to say anything?

1587 A. In relation to whether the company would take them back or not, some one brought that question up. I said, "Well, we will call Mr. Jorgensen in and ask him the company's viewpoint on it."

So I did. I called Mr. Jorgensen in from the other room.

By Mr. MERRICK:

Q. What did he say, do you remember?

A. I told him that the men wanted to know just under what conditions they could return to work, provided the vote went that way. He told them that they could return to work unconditionally; that they would retain their former positions, capacities, and that the strike would be forgotten.

And then he had a piece of paper in his hand and he said, "Excepting these names," and he read them off and said, "These men will have to submit an application for reinstatement."

Q. That is all that you remember he said?

A. Yes.

Q. Did any one ask him any questions?

A. Not that I remember, excepting myself. I did ask him a question. I asked him if the men did return to work and at any other time in the future they made errors in their work, which we all do

sometimes, would those errors be used as an excuse for discrimination and discharge.

He said, "No, positively not."

1588 Q. What happened after Mr. Jorgensen had made that statement?

A. There was general discussion around the room about how the strike was going, why the strike was called, activities in the union.

Q. Was a vote taken on this issue of going back to work?

A. Yes. Around 6 o'clock or so, sometime around there, they decided that we had had enough talk about it, and to get it over with, and take a vote.

Mr. Hatch went out in the next room and got some paper—I don't know where from—and tore it up into little stubs and passed them around.

Q. Was there any discussion as to what majority would be necessary in order to determine this question?

A. Yes; two-thirds majority.

Q. A vote was taken on that?

A. Yes.

Q. And these ballots were distributed?

A. Yes.

Q. And what was the question on which they voted?

A. On whether or not they would return to work—"Yes" for return to work, and "No" to stay out.

Q. Did you appoint tellers?

A. No.

Q. Who counted the ballots?

1589 A. I remember one of them was Mr. Martinelli; the other I can't definitely recall now.

Q. Do you know how either of them happened to act in that capacity?

A. Voluntarily, as far as I know.

Q. And what was the vote, if you remember?

A. It was something like 22 to 8, I believe, to return to work.

Q. Any blanks?

A. Yes; six or seven blanks.

Q. Did you announce the result of the vote?

A. Well, Mr. Martinelli and the other fellow checked them once, and then checked them again to make sure, and they either told me or told the whole assembly right then what the decision was, how it came out.

Q. Any one question the vote?

A. No.

Q. Was there any further discussion after the vote, that you can recollect?

A. Well, general discussion. Then I believe I asked Mr. Jorgensen, I said, "Well, what now?"

He said, "Well, I think the best thing to do is for everybody to go down to the office in a body and report in."

Q. And did that meeting with general approval? What happened?

1590 A. We all left and went downstairs. We got outside and there were some machines, not enough for every one to ride down in, so we decided that every one would walk down together.

Q. Did you go back to the office then at that time?

A. Yes.

Q. What happened when you got back to the office?

A. Everybody walked in and stood around, and then Mr. Layman, Buckley, and myself, as supervisors, started assigning men to positions and circuits to get things going in the proper way.

Q. By the way, how many names were ready by Mr. Jorgensen, do you remember?

A. About—I am not certain of the number—I have heard it up here; around, I think it was eleven.

Q. Did you see Mr. Rone after the meeting at the Bellevue Hotel, if you can remember?

A. Yes.

Q. When and where was it?

A. About, I think it was about 7 o'clock or so, when things got kind of settled in the office, I asked permission to go across to Foster's on Market Street and get some breakfast. I got that permission and went downstairs, and I met Rone on the corner.

Q. What was said?

A. I spoke to him and said, "Hello, Rone."

1591 He said, "Hello, Mac."

I said, "What are you doing?"

He said, "Oh, I just came over to see what it was all about," or words to that effect.

I said, "Are you going upstairs?"

He said, "No, not right now."

I said, "I think you should." I said, "The men that did come back are all working."

He said that he wasn't worried about himself right then; that what he was over there for primarily was to see that all the married men got back to work.

Q. Did he know about the meeting at the Bellevue Hotel when you talked to him?

A. Yes; and he asked me why he hadn't been notified himself, and I told him that through his moving and change of address, and failure to leave his new address and phone number in the card box provided for that up in the office, that we had no way of getting in touch with him.

Q. Did you discuss the list at all with Mr. Rone?

A. He may have asked me about it; yes.

Q. Did he know at that time whether his name was on the list?

A. Well, I had the impression that he knew more about it than I did. I couldn't remember all the names myself.

Q. You remembered at that time that his name was on the
1592 list?

A. Oh, yes.

Q. You, nevertheless, urged him to go upstairs?

A. Several times. I repeated that statement to him, that I thought it would be best for him to go up. And when I was leaving him—he wouldn't agree to go back—to go across the street, I turned back and said, "Well, Lon, suit yourself, but I sure think it would be a good idea to go upstairs."

Examination by Trial Examiner EICKHOFF:

Q. What did you have to do with notifying the men of that Bellevue meeting, Mr. McLaughlin?

A. Just the one man that I called from the hotel room up there, at 3 a. m., is the only one.

Q. How did you happen to know why Rone was not notified?

A. Well, that question had come up up there. Someone else had asked that question.

Q. At the meeting?

A. Sometime during the meeting; yes.

Q. And that explanation was given you?

A. Yes.

Q. Do you know by whom?

A. No; I am not sure.

Trial Examiner EICKHOFF. I think we will take a five
1593 minute recess at this time.

(At this point a recess was taken, after which the following proceedings were had:)

By Mr. MERRICK:

Q. Going back to what took place at the ARTA hall in the late afternoon or early morning of Monday, October 7th, do you remember seeing at the hall a memorandum on Mackay Radio inter-office memorandum stationery, with the initials, "J. O. W." on it?

A. Mr. Bash, after argument on my part as to what was meant by that telegram in stating the M. K. weakness——

Q. (Interrupting.) I don't think you mentioned the telegram. What telegram was that?

A. The one that was on the bulletin board, which I read when I first got down there.

Q. What did that say?

A. "Don't pay any attention to M. K. weakness. We didn't count on them anyway."

Q. Oh, yes.

A. He left the meeting and went outside, either in the office or some filing place, and came back with this Mackay Radio inter-office

communication blank in his hand, and on that was a message, either to or from Mr. Watkins, at Lobitos, giving the situation in the East, New York and Washington, stating that the communications service had continued interruptedly; that, I believe the figures were 83
1594 out of 94 men had returned to work. Then followed the argument about why it hadn't been shown to the men, or something like that, and Bash made the statement that he considered it unimportant in so far as it was on Mackay Radio stationery, that it was company propaganda put out to discourage the strike.

Q. Did you discuss the memorandum with him personally?

A. Yes. I couldn't see that it had to be company propaganda, and I asked him, since he received that, why he hadn't checked up on it personally to determine whether or not that was the true situation on the East coast. He told me that they naturally couldn't trust the Mackay Radio Telegraph system to find out the true situation, or any other telegraph system, because he considered them all in sympathy with each other against the strike.

Q. Did he indicate to you whether he believed the information in that memorandum about the 83 men having gone back to work was true or not?

A. Well, he said that he considered it company propaganda. But I couldn't see it that way. If it was company propaganda, it could have been put on the bulletin board in the spirit of ridicule, you might say, of the company; whereas he didn't, but he kept it in his own personal file.

Q. Had you seen the memorandum before he produced it?

A. No.

1595 Q. What happened to it after he produced it at this informal meeting, do you know?

A. He kept it.

Q. Did you have possession of it at any time?

A. No.

Q. Mr. McLaughlin, were you present at a meeting in the Postal Telegraph clock room on or about October 10th, around 4 o'clock in the afternoon?

A. I don't remember the date, but I was at the meeting.

Q. When did you first hear about that meeting?

A. When I arrived at the office to go to work.

Q. What time was that?

A. Approximately five minutes of four.

Q. Did you go to the meeting?

A. Yes.

Q. What happened there at the meeting?

A. They wanted another chairman, and since they picked on me once at the Bellevue Hotel they felt like they could do it again.

Q. Who asked you to act as chairman, do you remember?

A. I am not sure of that, either. It was just agreed that I was it.

Q. You hadn't know anything about this meeting until five minutes previous to your going down there?

A. No.

Q. What did you do as chairman; what did you say?

1596 A. Practically the same thing as at the other meeting. I didn't know what to do. I said I understood that the meeting was called simply for the purpose of having the New York men tell us what went on in New York during the strike.

Mr. McDonough got up and gave a speech of ten or fifteen minutes, or so, telling them how many men went out on strike, how many didn't stay out, and why they didn't stay out, and things to that effect.

He told them about their office relations committee back there; that they never really considered that they needed any union; that whatever they had ever asked for themselves, they had always gotten; but that they hadn't asked for any big thing at one time, but took it step by step.

Q. Do you remember what he said about the strike and how effective it was when it was first called?

A. I believe some one asked him how many men went out, and he made some statement to the effect that not enough of them went out to stop the operation in the operating room at that particular time and by the time the next trick was supposed to go to work they were practically all back.

Q. What time was that?

A. I believe that the strike was called, started on the——

Q. (Interrupting.) I mean what time was the next trick?

A. That would be, the way it is here—I don't know what the

1597 tricks are in New York—the next trick here would be 8 o'clock in the morning.

Q. He didn't say what time that the next trick began?

A. Not that I remember; no.

Q. But he said when the next trick did begin, they were——

Mr. EDISES. (Interrupting.) Just a moment! Are you asking him questions as to what took place in New York?

Mr. MERRICK. I am merely asking what Mr. McDonough said.

Mr. EDISES. Is this offered as evidence of what took place in New York?

Mr. MERRICK. You can take it any way you like.

Mr. EDISES. Well, I object to the introduction of that evidence, and object to any further testimony along that line.

Trial Examiner EICKHOFF. The question is what Mr. McDonough said. This witness' testimony will only go as to what Mr. McDonough said at the clock room meeting.

By Mr. MERRICK:

Q. I want to be sure that what you are quoting him as having said about when the men went back to work—you say when the next trick began he said what about the men?

A. He didn't specifically state the next trick, but he implied it.

Q. To the best of your recollection, what did he say as to when the men who did go out on strike returned?

A. That the only trick that was inconvenienced by the men
1598 going on strike was the trick on duty at the time the strike was called.

Q. And that practically the full complement were present when the next trick began; is that it?

A. Yes.

Mr. EDISES. I object to Mr. Merrick leading the witness.

Trial Examiner EICKHOFF. It expedites the hearing.

By Mr. MERRICK:

Q. What else took place at this meeting?

A. Mr. McDonough explained to them that they hadn't come out to San Francisco to take any jobs away from the men here; that they came out just to keep the circuits running, and that they were going back to New York just as soon as possible, and he himself, personally, would like that to be sooner.

Mr. Rone happened to be at that meeting and spoke up and asked McDonough if that was right; was he going back to New York?

Mr. McDonough said, "Yes."

Mr. Rone said, "Well, it would be best for you to go back to New York. It wouldn't be healthy to stay here."

Q. That, in substance, is all that transpired at the meeting?

A. No. Mr. McDonough tried to give some friendly message to Mr. Rone from men in New York that knew Rone, and Mr. Rone wouldn't accept the messages. He definitely stated that any such messages could be returned to the senders, and in a very
1599 definite way.

Q. I take it you mean in an uncomplimentary way?

A. Yes.

Q. Was there any——

A. (Interrupting.) The question came up—the meeting continued along other lines than what it was intended for. The question came up then about the men on that list, why some were on and why some were not on, and I believe Mr. Patterson was there. He specifically wanted to know what I thought about him being on the list.

Q. I don't think that really matters. Did Mr. Jorgensen come down to the meeting?

A. For that reason, yes. I told him that I couldn't say why he was on the list; that I didn't even know there was a list, and, therefore, I had nothing to do with it, and that I would go up and call Mr. Jorgensen, and if he wanted to tell him, he could.

Q. And Mr. Jorgensen was called?

A. Yes.

Q. What did he say when he got to the meeting?

A. Well, when he came down I told him what was wanted of him. He explained to him that the list was made out for devious reasons,

such as the men's actions in the operating room, their work, their general ability, and their trait of obeying or not obeying orders.

1600 Q. Does that conclude what you recollect about the meeting, of any significance, do you think, to this proceeding?

A. Yes.

Q. Was there any discussion of the formation of a relations committee at the H. B. office?

A. Yes; some one asked me just what I thought about the best program?

Q. Do you remember who it was that asked you?

A. No. And I told them then, and since Mr. Rone was there and had so much to do with the union, I told him that as far as I was concerned, that I was finished with the ARTA; that I didn't like the way it was represented, and he could take my resignation back with him when he went back to the ARTA; and that as far as any further committees of the union were concerned, that sometime in the future the men may, if they felt like it, form a similar organization as to the one that the operators have in New York.

Q. That was about all that was said on that subject?

A. Yes.

Q. How long had you been a member of the union?

A. Practically one of the first ones when it started.

Q. That is, you joined back in February 1934?

A. Sometime around in there; yes.

Q. I show you Respondent's Exhibit No. 10, and ask you whether you have seen that, or a similar document.

1601 A. [Examining Respondent's Exhibit No. 10.] This, I believe, is a copy of the one I saw.

Mr. EDISES. Was it admitted for identification?

Mr. MERRICK. In evidence.

By Mr. MERRICK:

Q. You mean the subject matter of that document is familiar to you?

A. Yes.

Q. Do you remember where you saw it?

A. On the bulletin board in the operating room.

Q. That is the first time that you had ever seen it?

A. Yes.

Q. Do you remember about what time, when it was that you saw it?

A. No; I couldn't say.

Q. Would it likely have been soon after—you were absent from the office on October 8th, or were you there on October 8th? That is, Tuesday.

A. Tuesday—I was there until—that is, the morning when we returned to work. I was there until about 9:30 or 10 a. m.

Q. Do you remember whether you saw it on the bulletin board that day or not?

A. I returned to work again that afternoon at 4 o'clock. If it was on the bulletin board, I saw it. I don't remember specifically.

1602 Q. I show you Board's Exhibit No. 13, and ask you if you have ever seen that before.

A. [Examining Board's Exhibit No. 13.] Yes, that is my signature there.

Q. When did you first see this—that is, Board's Exhibit No. 13?

A. Mr. McDonough wrote it up for me, according to my specifications.

Q. You had something, then, to do with the preparation of this?

A. Yes.

Q. What did you have to do with it?

A. Well, after seeing how New York handled a similar situation, I kind of got the idea that the same thing could be done out here.

Q. When did you get that idea, if you remember, before or after the meeting in the clock room, if that was on the 10th?

A. After.

Q. After that?

A. Yes.

Q. What did you do about it after you got the idea?

A. Well, since McDonough came from New York, he knew the procedure, evidently, and I talked it over with him. The only

1603 time I could talk to him—I was working—would be between moments when I would not be busy. That is all there was to it. I just talked to him about it.

The next day he asked me, "Did you do anything about that?" And I said, "No, not yet. I haven't had time."

Either that day or the day after, when he asked me again, I talked it over with him and told him how I would like to have it read. The thought in it, I believe it states that the men reserve the right to sometime in the future form an organization, or something, of their own and have representation with the company for any grievances they may have—I wanted that part put in there just to reserve the rights of the men.

Q. You are sure that you first mentioned it to Mr. McDonough and not he to you?

A. Yes.

Q. Do you call any of this language yours, or are just the ideas yours?

A. It is practically, the second paragraph, I believe, is about the reservation of the rights of the men, that is practically my own wording there. But McDonough wrote this first part up here [indicating].

Q. At your request?

A. Yes.

Q. What did you do about getting it signed?

1604 A. I signed it myself, the evening that he gave it to me. Then, instead of taking it around the office to any men on duty

at the time, I had an idea, I suppose, in the back of my head, that I would like to have the other supervisors on there with me first. So I put it in an envelope and left it for Mr. McKercher, my relief on the midwatch.

Q. Did you give him any note about it that you remember?

A. I handed it to him and told him what it was.

Q. Did you urge him to sign *him*?

A. Urge him? No.

Q. Had Mr. Jorgensen, Captain Dodd, or Mr. Rodman asked you to do anything of this kind?

A. No.

Q. Had you consulted with them about it at all?

A. No.

Q. Did you do anything more about it after leaving it with Mr. Layman?

A. You mean McKercher?

Q. Yes, McKercher.

A. Well, it was left for me then by him. I believe I submitted it to the first name here, in the morning, Mr. Buckley, and then Mr. Layman, the other two supervisors on duty.

Q. What else did you do about having it signed?

A. Passed it around in the operating room and asked
1605 several of them to sign it, and several of them refused, and several put their names down.

Q. Did you use any threats against anybody in order to induce them to sign it?

A. No. Several men asked me what it meant, did the company start it, would it further their aims with the company to sign it, or would it put them in Dutch not to sign.

Q. What did you tell them?

A. I told them the company wasn't doing it. That this was a petition, or whatever you might call it, by the men themselves, and whether they signed it or not, I didn't know what stand the company would take.

Q. What finally happened to it after their signatures were put on it, do you know?

A. I am not sure whether I turned it in—I think Mr. Spanover turned it in.

Q. Did you give everybody an opportunity to sign it?

A. Yes. I think it was turned in and either Mr. Jorgensen or some one else looked the list over, and the signatures on it, and they wanted to know if every one had had the opportunity of signing it. We got it back again, and those that hadn't signed it, we asked them, just submitted it to them again and told them it was returned to make sure that every one had had the opportunity of signing it.

Q. Did any more sign after that?

1606 A. Yes.

Q. Did any of these additional ones still decide not to sign it?

A. Yes. I haven't read this over, that is, the list of names and checked them, but Mr. Ludlam, I believe, was the first one that I personally asked to sign it, outside of Layman and Buckley, and he said, "No; my mother told me not to ever sign any paper."

I don't know yet whether he signed it or not.

Mr. Patterson refused to sign it on the plea that he held an ARTA card and at some time in the future he may want to ship out to sea as a marine operator and he understood that the ARTA had all ships tied up in this way: that the shipping companies had to hire operators through them, and he didn't want to jeopardize his chances of being hired on a boat if he felt like going to sea. I don't know whether his name is on there or not.

Examination by Trial Examiner EICKHOFF:

Q. Why did you turn it in to the company?

A. Sir.

Q. Why did you turn it in to the company?

A. That is what I understood to be the purpose of the thing, to tell the company that we no longer wished the ARTA to represent us with the company in dealings with them.

1607 Q. Did you also notify ARTA?

A. That this was being made up—I didn't.

By Mr. MERRICK:

Q. Mr. McLaughlin, has the Mackay Radio Company at any time paid any of your initiation fees or dues to the union?

A. No.

Q. Have you ever been requested, directly or indirectly, by any officer or agent of the company, to report on union activities or to act as a spy in behalf of the company?

A. No. It would be impossible, or would have been impossible for me to do that, inasmuch as I had been working the evening watch since I have been made supervisor up there—which I think was about July of last year—and I haven't been able to attend any meetings.

Q. You have testified that between the time you left on Friday night and you returned on Monday, you had no contact with any company representatives. Is that right?

A. Yes.

Q. Between the time that you returned on Monday, and the time that you went back to work on Tuesday morning, did you have any contacts, either personal or over the telephone, with any representative of the company, other than the telephone conversation that you have testified to with Captain Dodd, on Monday afternoon, and your conversation with Mr. Jorgensen at the Bellevue Hotel during the meeting?

1608 A. Unless you can call Miss O'Connor a representative of the company.

Q. Who is she?

A. Mr. Rodman's secretary.

Q. Did she bring you any word from Mr. Rodman or any representative of the company?

A. No. In fact, we tried to find out definitely from her how many men were up in the operating room, and she told us first seven, and then she told us fifteen, or twelve. She wouldn't let herself be pinned down.

Q. Aside from that conversation with Miss O'Connor about the number of men who were in the operating room, did you have any contact with the company officials, or anybody who purported to represent them?

A. No.

Q. So far as you know, did the company have anything whatever to do with the holding of the meeting at the Bellevue Hotel, other than Mr. Jorgensen being present to state the conditions under which the men would be taken back?

A. I testified I didn't know anything about how that meeting was called. My first inkling was when Mr. Burtz called me.

Q. Did the company, as far as you know, have anything to do with the preparation or signing of the round robin that you hold in your hand?

1609 A. I know they had nothing to do with the preparation of it, and as far as the signing of it was concerned, Mr. Spanover and myself took the major part in that.

Q. But as far as you know, Mr. Spanover was not acting, or was he acting as a representative of the company in that connection?

A. Not to my knowledge.

Q. Did you ask Mr. Spanover to help you in getting the signatures?

A. No.

Q. Do you know how he happened to take an interest in it?

A. It has been Spanover's habit in the office to take up pools on Thanksgiving, pools on Christmas, pools on the World Series, and he just about fell in the habit of taking things around and having them signed.

Q. Do you have a hostile feeling toward the organization known as ARTA?

A. Hostile? No.

Q. Did you pay your dues regularly prior to the strike?

A. No. I believe at the time the strike was called I was approximately ten months or so behind in my dues.

Q. Did you contribute to any special fund of the union?

A. I contributed to Mr. Salisbury's fare to return to San Francisco.

Q. When was that?

A. After the strike.

1610 Q. After the strike?

A. Yes.

Q. Who requested you to contribute to that fund?

A. I wasn't requested. Mr. Burtz was going around the office collecting it, and I asked him what he was doing. He told me. I said, "You can put me down for a couple of bucks."

Q. You contributed $2?

A. I believe that was the amount.

Q. And Mr. Burtz was active in soliciting funds to enable Mr. Salisbury to return?

A. Yes.

Q. Has the company given you any specific reward or special advancement for any of the activities you indulged in during and after the strike?

A. No. In fact, I requested something myself. In view of the few telephone calls that I received, calling me a rat, and a longtailed so and so—and I told them they couldn't call me that any more because the regulations forbade it over the telephone—I requested permission to work daytimes so I wouldn't have to go home at 12 o'clock at night, and I didn't get it.

Q. Did you go back to the same position after the strike that you had held before?

A. Yes.

1611 Q. At the same rate of pay?

A. Yes.

Q. Did anything unusual happen to you on the night or early morning of October 29th?

Mr. EDISES. I object to the bringing in of any evidence as to anything unusual on October 29th. Certainly whatever happened then can have nothing to do with this situation that we are concerned with; and Mr. Merrick has not laid any foundation or given any indication of the connection of his question with the circumstances that we are dealing with. It is broad and general, that question is, and on the fact of it it has nothing to do with the matters we are here concerned with.

Trial Examiner EICKHOFF. Do you want him to lead the witness?

Mr. EDISES. No; but I want him to establish a foundation for that question.

Trial Examiner EICKHOFF. Maybe the answer will.

Mr. EDISES. But I prefer, or believe it is customary, is it not, to have the interrogator himself establish a foundation for a question? He can't simply shoot a general question at a witness and hope that it will indicate its relevancy.

Trial Examiner EICKHOFF. It looks like a perfectly harmless question. I will allow it.

1612 A. Yes. When I got off the——

Trial Examiner EICKHOFF. That is the answer.

By Mr. MERRICK:

Q. What was it?

A. Well——

Mr. EDISES. (Interrupting.) I renew my objection, Mr. Examiner.

Trial Examiner EICKHOFF. Overruled.

A. I got off my tour of duty at midnight, and I took the No. 31 street car. It goes out Balboa, and I got off at 9th and Balboa Streets. I was walking home, and I heard people walking behind me, but I paid no attention to them. But when I was about a half or a quarter of a block from my house, I was trying to light a cigarette, and suddenly I was hit in the back of the head. Three men jumped on me, hitting me about the face and head, body, and one attempting to kick me in the lower groin; one holding onto my wrist, and, evidently, trying to break my finger. It is still not its normal shape.

At the time the kick was aimed at me, I made a terrific lunge backward to get out of the way. The lunge——

Trial Examiner EICKHOFF. I don't think the details are of any particular importance one way or the other. You were set upon by three men.

The WITNESS. Yes.

Mr. MERRICK. Yes.

1613 By Mr. MERRICK:

Q. Were you able to identify them?

A. No. At no time during the fracas did I have any opportunity of a direct look at any of them.

Mr. EDISES. I request all the testimony given by Mr. McLaughlin be stricken from the record in that connection.

Trial Examiner EICKHOFF. Granted.

By Mr. MERRICK:

Q. Had you previous to this time received any threats?

A. No.

Trial Examiner EICKHOFF. From whom?

By Mr. MERRICK:

Q. Do you know whether any other operators in the H. B. office received threats of violence at about this time?

Mr. EDISES. I object to that question, Mr. Examiner, unless it is indicated by whom the threats were made, and what bearing they have on the issues in this case.

Mr. MERRICK. That will be the next question.

Trial Examiner EICKHOFF. What period is that now?

Mr. EDISES. He is speaking of October 29th, all long after the events we are concerned with.

Mr. MERRICK. Are you willing to strike all the testimony that you have introduced as to what happened after the strike?

Mr. EDISES. No, because the testimony I introduced as to what happened after the strike has a direct bearing on the issues we are concerned with here.

1614 Trial Examiner EICKHOFF. This may do you more good than harm. You cannot tell.

A. I don't know of any direct threats, but at the meeting at ARTA hall on Monday evening, I was present at around 6 o'clock or thereabouts, and——

By Mr. MERRICK:

Q. October 7th, you mean?

A. Yes—and Mr. Clifford got up and pointed specifically at Mr. Spanover and told him then that they had certain ways of dealing with certain kinds of men; that ARTA had at their disposal longshoremen who did not hesitate in any way in breaking a man's arm, or his legs, or dropping him in the Bay.

Q. Did you hear any discussion about sending any one to the airport to meet the men coming in from New York?

A. No.

Examination by Trial Examiner EICKHOFF:

Q. You don't feel resentful toward ARTA or any one in it?

A. Personal resentment?

Q. Yes.

A. Only I resent Mr. Salisbury's returning to San Francisco and, as Mr. Burtz told me, he included me in his conversation or name that he called Burtz. I just resented that. After my donating to his return, I didn't think that it was proper.

1615 By Mr. MERRICK:

Q. Do you have any resentment toward Mr. Rone?

A. No.

Q. Mr. Bash?

A. No.

Q. Mr. Loudermilk?

A. No.

Q. Mr. Palmer?

A. No.

Q. Mr. Phelps?

A. No.

By Trial Examiner EICKHOFF:

Q. I understand from your testimony that you were never a very enthusiastic ARTA man, is that so?

A. Well, I couldn't very well claim to be on account of not attending meetings for more than a year, not knowing what was going on, or anything like that. I couldn't call myself a strong union man. In fact, I was told that I wasn't.

Q. Then, after the strike you were very much interested in having ARTA repudiated by the man in the H. B. office?

A. Simply because I considered——

Q. (Interrupting.) That is so, isn't it.?

A. Yes.

Q. That was your motive in preparing or causing the preparation of this document?

1616 A. Yes, to stop them from causing the men in the H. B. office any further inconvenience in that kind of representation?

Q. So the interests of ARTA weren't next to your heart at any time?

A. I couldn't say it really was.

Trial Examiner EICKHOFF. That is all.

We will recess until 2 o'clock.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2:15 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner EICKHOFF. You may proceed, Mr. Edises.

A. M. MCLAUGHLIN, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross examination by Mr. EDISES:

Q. When did you say you joined ARTA?

A. I couldn't give the date. I said I was one of the first ones to join.

Q. Did you join voluntarily?

A. Yes.

Q. Did you have any special reason for joining?

A. I thought that the unionization of H. B. operators would be a good thing for them.

1617 Q. Have you changed your opinion in that respect?

A. Only in so far as the representation. I still think the organization of the men is good.

Q. What do you mean by only in so far as the representation?

A. I objected to the representation given us in the strike. My ideas of it, and the union's conception—when I first joined it it was told me that the point to point group, of which I was a member, would be solely point to point, and all questions, arguments, or decisions were to be made solely by the point to point men.

Q. And it is your position that that promise was violated?

A. Yes. It was my understanding that the point to point, some time since then, had become affiliated with some other joints or branches of the union.

Q. Is that the sole basis of your changed opinion in regard to ARTA?

A. And upon discovery, upon my arrival at the ARTA hall that Monday afternoon and finding out that all the information pertaining to conditions in New York hadn't been given to the men, I couldn't understand why such information wasn't given to them; and therefore it looked to me as if it wasn't being run solely for the benefit of the men.

Q. What information are you referring to that was not given to the men?

1618 A. The one main item that has been brought up, about conditions in New York, how many men had returned to work.

Q. Did you have knowledge of such information which was obtained by ARTA officials and which was not passed on to the men?

A. That 83 out of 94 men having returned to work, I don't believe was given out.

Q. Yes; but you misunderstand my question. Do you have knowledge that ARTA officials obtained information in regard to the New York situation which they did not pass on to the men?

A. Definite knowledge?

Q. Yes.

A. No.

Q. Did ARTA ever carry on any negotiations with the company on your behalf, especially in your behalf I mean?

A. I don't know.

Q. How did you come to get your supervisor's job? Didn't the union request that you be given that job?

A. Not to my knowledge.

Q. Well, what took place in connection with your obtaining your supervisor's job?

A. A notice was posted on the bulletin board advising every one that there were vacancies, or position created for supervisors,
1619 and requesting applications be filed with the chief operator, who, at that time, was Mr. Layman, for these positions, and I put my application in.

Q. However, there was some action on the part of the union in that connection, was there not, or don't you remember?

A. Was there some action?

Mr. MERRICK. I would like to ask the Examiner whether he thinks this line of questioning is helpful. It doesn't show bias, the facts in and of themselves aren't material, and it doesn't attack his credibility. I don't know what the purpose is.

Mr. EDISES. I haven't objected to the scope of your examination, with one very obvious exception, and I trust I may be permitted to lead up to certain matter that I have in mind.

This is cross examination, you know, after all.

Trial Examiner EICKHOFF. Well, don't dwell on single points so much. Move along.

By Mr. EDISES:

Q. Do you now recall the part that the union had in connection with your getting the supervisor's job?

A. I was never informed of any action taken by them.

Q. Mr. McLaughlin, you don't attribute any bad faith to any of the ARTA officials, do you?

A. Will you explain the question, please?

1620 Q. I understand that you disapprove of certain of their actions, but you don't think that those actions were undertaken in bad faith, do you?

A. Well, I wouldn't put it that way. It may have just been a misunderstanding of their powers or what they were supposed to be representing.

Q. You have never had any cause to question the sincerity of the men who were leading ARTA, have you?

A. Only in that one instance that I quoted there. To my way of thinking, they should have informed every one, of the exact conditions in New York.

Q. Except that you don't know that they had any definite information from New York; is that not true?

A. Excepting the piece of paper produced which said so.

Q. The piece of paper produced was a piece of paper signed by Mr. Watkins on Mackay stationery; is that correct?

A. I said I didn't know whether it was to or from Watkins, but his name was on it.

Q. Nevertheless that is the only document that you have in mind?

A. Yes.

Q. And the only basis on which you predicate your statement that the ARTA officials withheld information from the men; is that correct?

A. Yes.

1621 Q. You mentioned a colloquy or conversation that took place on the picket lines, I believe, shortly after you returned from out of town on Monday the 7th. Do you remember that testimony?

A. Around 2:30 or 3 o'clock?

Q. Yes.

A. Yes.

Q. You mentioned something about baseball bats. Do you remember who made that statement?

A. Mr. Buckley.

Q. Mr. Buckley?

A. Yes.

Q. Mr. Buckley is a supervisor?

A. Yes.

Q. Do you know whether Mr. Buckley was a member of the union at the time?

A. I don't know for certain at that time, but I have heard since that he was called upon, I believe, Sunday night or sometime before I got back there, by the committee from the union, or representatives from the union, requesting his signature and application for membership, and his initiation fees.

Q. And did you hear any further statements in reference to baseball bats from any other one, other than Mr. Buckley?

A. No.

1622 Q. Was that all the talk of violence that you heard at that time?

A. Yes.

Q. When did you first learn about this list of eleven men?

A. When I called on Mr. Jorgensen to speak at the Bellevue Hotel meeting to explain the position of the company and the return of the men.

Q. And previously was it your impression that all of the men were to be permitted to return to work without discrimination?

A. Yes.

Q. Did you know who was being phoned by Mr. Hatch and Mr. Burtz in connection with the meeting?

A. I didn't have the list. I believe I said that I tried to listen to them phoning, but they were inside the booth.

Q. Did you do any phoning on your own hook?

A. One man that I have testified to.

Q. Do you recall at this time who suggested that you phone the ARTA hall?

A. No.

Q. Some one suggested it to you, however, is that not correct?

A. Yes.

Q. Was it Mr. Hatch?

A. No; I don't believe it was. There were at that time
1623 approximately about 20 men in the room talking all at one time, and somebody, I believe, mentioned that Beebe may be down at ARTA hall sleeping.

Q. So it was your intention to get in touch with Beebe, is that correct?

A. Yes.

Q. Will you restate at this time exactly what you said to Mr. Beebe, as closely as you can remember?

A. Yes; I said to him, "Hello, Beebe."

And he said, "Hello."

I told him who it was. And then I said, "What do you think about going back to work?"

He said, "It sounds fine to me," or "It sounds pretty good to me."

I said, "We are having a meeting up at the Bellevue Hotel, and if there is any one else down there, come on up."

Q. Is that all that was said?

A. That finished the conversation; yes.

Q. What did he say to you when you said, "If there is any one else down there, come on up"?

A. He gave me to understand that he was coming up, and he said, "All right," or something like that, and that was all.

Q. Did you have any particular reason to believe that any one would be at the ARTA hall at that hour of the morning, other than Mr. Beebe?

1624 A. I hadn't given it any thought.

Q. In other words, you didn't anticipate being able to reach other men than Beebe when you phoned at that time?

A. No, but I thought to myself, if he was there, some one else might be there too.

Q. You had no particular persons in mind, however?
A. No.
Q. How many men showed up at the Bellevue Hotel?
Mr. MERRICK. Is this a memory testing question? I don't like to object to these questions, but I can't see—the objection is in asking him this again. He has already testified about that. There is no conflict.
Mr. EDISES. It would save time if you wouldn't object.
Mr. MERRICK. I don't see why you see the necessity in asking such questions if it is not that you are trying to test his memory.

By Mr. EDISES:

Q. Will you answer the question?
Trial Examiner EICKHOFF. Do you object to the question?
Mr. MERRICK. Yes, I object, in order to get a ruling.
Trial Examiner EICKHOFF. Overruled.
A. I think that would be more closely determined, rather than from my memory, by referring to the record of the vote taken.

By Mr. EDISES:

Q. Well, the point is that there were a number of men who were not reached, isn't that true?
1625 A. Certainly.
Mr. MERRICK. That doesn't follow how many were there. He testified he knew nothing about the calling of them. I object to that question. He hasn't shown that this witness has any knowledge as to how many were called and how many weren't called.

By Mr. EDISES:

Q. Did it seem to you at all peculiar that certain men were not present, and that the meeting was expected to decide the question of who should return to work, in the absence of a considerable number of men?
Mr. MERRICK. I object to that question. It is immaterial and irrelevant.
Trial Examiner EICKHOFF. Overruled.
A. Why, no. I think the question came up there in the meeting, of whether or not we had enough men to represent the entire office, and it was decided that we did, because many more important questions had been decided down at ARTA hall with a less number of workers or representatives of the office.
Q. Was there any discussion about letting the men who were not present express their views on the question of who should return to work, or whether they should return to work?
A. I am not sure about the men in the H. B. office, but I brought up the question myself of whether or not we would be permitted to represent the Lobitos and Palo Alto men.
1626 Q. What was said to that?

A. I was voted down on that, with the statement that this was solely the H. P. operating room representation, and that if they wanted to do anything themselves, it was up to them.

Q. Do you recall who made that statement?

A. I think Mr. Hatch did. I don't know whether Mr. Jorgensen corroborated him or not.

Q. It is possible that he did corroborate Mr. Hatch in that respect?

A. It is possible, yes.

Q. Did Mr. Jorgensen make any other statement to any of the men, other than his reading of the list—did he answer any questions?

A. I don't remember. Questions may have been asked him about the men coming back to work.

Q. Do you remember what was said in that connection?

A. No.

Q. What was your understanding of the status of the eleven men on the list?

Mr. MERRICK. I object to what his understanding was. It is entirely immaterial. He has testified to what he heard.

Trial Examiner EICKHOFF. Overruled.

A. I had no definite understanding of it. It was simply
1627 stated that every one would be taken back unconditionally, except the eleven men who would have to file their applications for reinstatement.

By Mr. EDISES:

Q. I understand that you referred to the list as the shit list, is that correct?

A. I am not in the habit of using such language; I may have.

Q. And does that expression have any particular meaning in your mind?

A. Why, no. For instance, if I walked over and bawled a man out for his work on the circuit, for his inattention to his work, he could turn to his next man, to the man sitting next to him, and remark that he was on that list; it is just simply by being bawled out.

Q. Did Mr. Rathborne present himself at the meeting at the Bellevue?

A. Yes; he did.

Q. Was that before the meeting had commenced, or after it had already started?

A. Before.

Q. And did you have a conversation with Mr. Rathborne at that time?

A. Mr. Hatch first spoke to him and told him that his presence wasn't desired at the meeting. Mr. Rathborne wanted to know why, and he was told that the meeting was solely an H. B. operating
1628 room meeting, without any outside pressure or representatives, or outside witnesses; just the men themselves.

Then I spoke up and I said something similar to that, that that was what I thought it was, too.

Q. You requested that he take his leave from the meeting?

A. Yes.

Q. Do you know why the meeting was not held at the ARTA hall?

A. No, excepting, as I have just stated, it was supposed to be only the operators and with no outside influence.

Q. And when you speak of outside influence, just what do you have in mind?

Trial Examiner EICKHOFF. There is no doubt, is there, that you intended to proceed with this meeting independent of the union?

The WITNESS. Yes.

Trial Examiner EICKHOFF. There is no question about that, is there?

The WITNESS. No.

By Mr. EDISES:

Q. How was the vote conducted—before you describe that, let me ask you this: Just exactly what was the proposition voted on? Was it whether or not the H. B. Men should go back to work with the exception of the eleven on the list? Was that the proposition? Just what was the proposition?

1629 A. No exception—when it finally got around to the time to take a vote they wanted to know what to vote on. There was general argument, 30 to 40 men arguing at one time, and I couldn't say what it was all about, but we just had one thing, and they finally decided that "Yes" and "No" would be sufficient, and "Yes" would mean they would go back to work, and "No" that they would stay out.

Q. And how about the eleven on the list?

A. They spoke themselves, saying that they didn't know whether they should vote; that if they voted for the men to go back to work, they would be putting themselves out of a job, or if they voted for the men to stay out, they would be keeping the men out of work, or something to that effect. And they finally decided, if they wanted to, that they either wouldn't vote or put blank ballots in.

Q. Was the voting secret, or was it all done openly?

A. Everyone used their own pencil. If they didn't have a pencil they borrowed one.

Q. It was possible, if a man looked around, to see how the others were voting, wasn't it?

A. If a man wanted to hold it out in front and show it to somebody, yes.

Q. The point is, that the ballots weren't concealed?

A. They didn't singly leave the room and write them out. They sat there in one place and wrote it themselves.

1630 Q. Was it pretty clear as to who had the deciding votes at the meeting?

A. No. Only one vote that I saw myself, and that was the only vote that I know which way it was cast.

Q. And whose vote was that?

A. Is that necessary?

Q. Well, can you explain just how you happened to know that that dissenting vote was cast?

A. Yes. This one particular man couldn't make up his mind and sat over in the corner, not on the settee, but next to it like this [indicating] in the corner, and after all the votes had been taken up and had been placed in a hat—I believe I took them up myself, I went in the other room to see if there were any more votes in there; and he called to me and said, "Hey, Mac, there is still one more vote."

I went back and when he handed it to me, or put it in the hat, he had his hand like that, not folded [indicating] and then he took it out and then folded it and dropped it in.

Q. Do you remember Mr. Martinelli asking any questions or taking any part in the discussion?

A. Not particularly; no.

Q. Do you remember who it was, if any one, who made a statement substantially as follows: "Well, I can understand your not taking back the first five on the list," referring to Salisbury,
1631 Loudermilk, Rone, Bash, and Palmer, "but I cannot understand why you are not taking back the deadwood," or some such expression.

Do you remember who said that?

A. No; I don't.

Q. Do you recall that something of that sort was said?

A. I don't recall it; no. You put it in my mind.

Q. Does that stimulate your recollection any?

A. Not a bit.

Q. Wasn't there discussion, however, as to the names of the men on the list?

A. At that time—I don't know.

Q. At any time during the meeting.

A. During the meeting?

Q. Yes. The men asked questions about the various names on the list, didn't they?

A. Not addressed to me.

Q. Addressed to whom?

A. Between themselves they may have, but I don't recall any discussion. As I said, there were 30 or 40 men sitting there talking between themselves, and I can't pick one out.

Q. Well, don't you remember any one asking Mr. Jorgensen as to why the names were on the list and what they represented, and so on?

A. No. I remember Jones speaking up and saying, "Well,
1632 my name is not on that list, but I went out with the men so you might as well put my name on it."

Q. Were there any similar comments?

A. No others that I can remember.

Examination by Trial Examiner EICKHOFF:

Q. Did the meeting discuss the question of whether they should go back to work without the eleven men on the list, or regardless of whether they were reinstated?

A. I think Mr. Loudermilk said something about, "If you want to vote on it, don't let me stand in your way. If I don't go back, it doesn't make any difference to you."

And Palmer got up and said, "That goes for me, too."

Q. Were there any questions before the meeting which were generally discussed, as to whether these men should be allowed to remain out and the rest of you go back to work?

A. I don't believe it was brought up that way; no.

Q. Was there any discussion on the question of whether you should all go back on equal terms or not go back at all?

A. I think something like that would be bound to come up in a general argument.

Q. The question was whether you remember it coming up.

A. No; not specifically.

Q. Do you remember it at all?

1633 A. Excepting in the general arguments of the men on strike, whether they wanted to go back to work or not; just, do we stay out all together or do we go back all together—things like that.

By Mr. EDISES:

Q. You made the statement, I believe, Mr. McLaughlin, that Mr. Rone—not Mr. Rone, but Mr. Palmer and Mr. Loudermilk got up in the meeting and said, "Well, don't let the fact that I am not getting my job stand in the way of your fellows going back to work," or words to that effect. Was that the substance of your testimony?

A. I believe I just told the Examiner that he said, in relation to the vote, that if they voted to vote themselves back to work and he didn't go back, not to think about him.

Q. Well, the point I am making is that you recall that Loudermilk and Palmer did state essentially what I have just rephrased, is that correct? I just want to get your recollection.

A. Something like that; yes.

Q. Mr. Jorgensen was present, or within hearing distance, I suppose, at that time, and the rest of the time, was he not?

A. He was in the next room.

Q. But these statements of Loudermilk and Palmer were addressed to the general gathering, were they not?

A. In the room where they were; yes.

Q. And was the door open between the two rooms?

1634 A. I was standing there; it was open.

Q. Mr. Jorgensen was listening to the proceedings of the meeting?

Mr. MERRICK. I object.

Trial Examiner EICKHOFF. Sustained.

By Mr. EDISES:

Q. Was Mr. Jorgensen standing alongside of you?

A. I don't think so. I wasn't looking back of me.

Q. Do you remember just where he was, with particular reference to the time that Loudermilk and Palmer stated, "Well, don't let me stand in the way of your going back to work without me," or words to that effect?

A. No.

Q. Was there any response to that by any of the men or yourself, to those statements by Mr. Loudermiik and Mr. Palmer?

A. Not that I remember.

Q. It was pretty generally understood, was it not, that they hadn't misstated the situation when they put it that way? Was that the understanding of the meeting, that the men were to go back to work, and that Loudermilk and Palmer, and so on, were to be more or less sacrificed, you might say? Was there any dispute as to that?

Mr. MERRICK. I think he ought to make the question a little more clear, Mr. Examiner. He should come out and ask what he means.

1635 By Mr. EDISES:

Q. Do you understand my question, Mr. McLaughlin? Was there any doubt in the minds of the men present, or in your own mind, that Mr. Loudermilk and Mr. Palmer and the others on the list were to be, we will say, sacrificed, as it were?

A. I wasn't certain about what status they would be taken back to work on.

Q. What was your belief at the time, not your belief at a subsequent time, but at that time, at the meeting; what was your understanding as to what their status was to be?

Mr. MERRICK. I object to the question.

Trial Examiner EICKHOFF. Overruled.

A. I had no understanding as to how they would be taken back. I hadn't been told anything else, so I couldn't make any conjecture as to whether they were to go back, or how.

Examination by Trial Examiner EICKHOFF:

Q. Did you know whether they were offered temporary employment or not?

A. Sometime—I am not sure whether it was at that meeting or whether it referred to Mr. York, Patterson, Dwyer, those that did come back who were on that list—the term "temporary basis" was used subject to approval of applications.

Q. But you don't know that it was at this meeting?

A. I am not certain; no.

By Mr. EDISES:

Q. Do you know how it is that certain members, certain of
1636 the persons who were named on the list had been reemployed while others on the list have not been taken back?

A. No.

Q. Are you familiar with the method in which business is transacted at ARTA?

A. No.

Q. You have attended meetings, have you not?

A. Since July last year, no; that is, with the exception of one time when I thought some one was down there that I wanted to see. I believe I was working from 2 in the afternoon until 10 p. m. When I got off at 10, I went down to speak to this party. I had been there maybe ten minutes or so, and then I left.

Q. Prior to the time that you are now speaking of——

Trial Examiner EICKHOFF. What are you trying to get at? It seems we are getting pretty far off the subject.

By Mr. EDISES:

Q. Before you were appointed supervisor did you take an active part in ARTA meetings, ARTA work?

A. No.

Q. However, you attended meetings fairly regular, did you not?

A. No.

Q. Did you ever vote on any proposition at ARTA?

A. At a meeting?

Q. Yes; at a meeting.

1637 A. It has been quite some time ago, when they first held their meetings down at the Lincoln Hotel, and I think Mr. Mathison was chairman, or a representative of the union, or something down there at the time when I first joined, and I am not sure whether or not any subjects ever came up in the first minutes where it took a vote.

Q. At the meetings that you attended was general discussion permitted on all propositions?

A. Yes.

Q. Was every one given an opportunity to state their views?

A. I don't see how it could be stopped.

Trial Examiner EICKHOFF. Does this make any difference, Mr. Edises? Can't you come out and ask the question?

By Mr. EDISES:

Q. Have you ever attempted to submit a proposition of any kind to the membership at ARTA and been denied that opportunity?

Mr. MERRICK. I object to it simply as irrelevant and immaterial.

Trial Examiner EICKHOFF. Overruled.

A. I just testified that I hadn't attended any meetings. How could I?

By Mr. EDISES:

Q. You have never been refused an opportunity to present your points of view, have you?

A. No one ever told me that I couldn't go down there and say what I wanted to.

1638 Q. You have always been allowed to do that, is that right?
A. Yes.
Q. Do you know of any case where action was taken without an expression of approval by the membership?
A. Expression of approval?
Q. Yes. Do you know of any case where the officials of the union did anything without a majority of the members passing on the proposition?
A. They called the strike.
Q. What do you know about the calling of the strike?
A. From all the men that I talked to.
Q. Were you present at any meeting in which the strike was discussed?
A. No.
Q. Well, then, you have no first-hand knowledge of the calling of the strike, have you?
A. No.
Q. You testified that Mr. Bash at the meeting on Monday, October 7th, made a suggestion in regard to meeting some strikebreakers who were coming from the East; is that correct?
A. He didn't say anything like that, I don't think. I testified that he told the men—that was to the effect that the only thing they could do to win—or something like that—would be to stop the scabs
1639 coming from New York from getting into the office and going to work.
Q. After he made that statement did you discuss that with anybody?
A. About stopping the men?
Q. Did you discuss stopping the men, or discuss Bash's statement with any one?
A. I probably talked about it sitting in Mr. Spanover's car—talked to Spanover and Horstmeyer.
Q. Did you express disapproval of the idea?
A. Certainly.
Q. Did you phone Mr. Dewey, or Mr. Jorgensen, or Mr. Rodman, or Captain Dodd at about that time?
A. No.
Q. Did you make any report as to that proposition of Mr. Bash's to any company official?
A. No.
Q. You are aware, of course, some one phoned and passed on that information, aren't you?
A. No.
Q. When you left the meeting at ARTA, the last time, Monday, October 7, you were aware of the fact that a meeting was to be held the following morning at 10 a. m., were you not?
A. Yes.
Q. In the meantime everything was to remain in status quo?
A. Yes.

1640 Q. You knew also that the men had agreed that pending a telephone conversation with New York, nothing further was to be done?

A. No.

Q. Didn't you know?

A. I didn't know there was to be a telephone conversation.

Q. As far as you were aware, everything was to remain as it was until the following morning?

A. Yes.

Q. When you left the meeting the strike had not been called off, had it?

A. No.

Q. You stated when you and Mr. Spanover left the meeting on Monday, October 7th, you drove around together and talked over the situation in general?

A. Yes.

Q. And you decided not to do anything yourselves; is that correct?

A. Yes.

Q. Why did you make that decision?

A. What could we do?

Q. In other words, you felt that there were—that the matter was being handled in its official channels—proper channels, and you were content to let things remain as they were?

1641 A. I don't know what you mean by official channels or proper channels.

Q. The point is that you and Mr. Spanover didn't suggest that you ought to take it out of the hands of ARTA, did you?

A. No.

Q. You were satisfied to let the officials of ARTA, and the members of ARTA, continue taking care of the strike situation, weren't you?

A. No; I intended going back at 10 o'clock—at the 10 o'clock meeting—and repeating my arguments and bettering them, if I could.

Q. But you didn't intend at that time to take it out of the hands of ARTA?

A. No.

Q. Do you recall your conversation with Mr. Rone on the morning of Tuesday, October 8?

A. Yes.

Q. Where did that conversation take place?

A. On the corner of Bush and Battery—the corner of the Postal Telegraph Building.

Q. Do you remember what was first said in that conversation?

A. I believe the first word spoken at the meeting is the usual word, "Hello," or something like that. But as to recalling the exact phrasing or sequence of conversation, I can't.

1642 Q. Well, you told Mr. Rone about the meeting at the Bellevue; is that correct?

A. Yes.

Q. He asked you questions about it?

A. I don't know. I am not—I said, "Yes," but I am not positive of that. I say yes; that it more than likely did come up.

Q. And you mentioned the fact that Rone was on this list, did you not?

A. It was on my mind. I must have.

Q. Rone testified that the first information that he had of the meeting at the Bellevue Hotel was received from you the following morning.

Mr. MERRICK. I don't think he did testify to that.

Mr. EDISES. I believe he did.

Mr. MERRICK. If you put the question, "If he did,"——

Mr. EDISES (Interrupting). I didn't put the question "if he did." I said he did.

Trial Examiner EICKHOFF. It is not necessary to state to this witness what Mr. Rone testified.

By Mr. EDISES:

Q. Did you have any reason to believe at your conversation with Mr. Rone that he already knew about the meeting at the Bellevue?

A. He knew about the breaking up of the strike or he wouldn't have been there on the corner and stated to me he
1643 was interested only in the married men getting back. If he knew about that, he must have known what led up to it.

Q. When did you first meet Mr. McDonough?

A. The date and time I cannot recall; but he was introduced to me.

Q. By whom?

A. I think it was Mr. Jorgensen; I am not sure of that. It was in the H. B. operating room.

Q. Your best recollection is that he was introduced to you by Mr. Jorgensen in the H. B. Operating room?

A. I am not sure it was Mr. Jorgensen.

Q. You can't think of any one else other than Mr. Jorgensen at this time, however, who might have introduced him to you?

A. No.

Q. What was said when he was introduced to you? What were you told about what his job was to be?

A. Nothing.

Q. Do you remember the conversation when you were introduced to him?

A. "Mr. McLaughlin, Mr. McDonough; Mr. McLaughlin, Mr. French; Mr. Monroe." I am not sure whether—I am not sure who was there. I think Senseman and White from Chicago were there—just a general introduction.

Q. In other words, you were being introduced to all of
1644 the strike breakers who had come out from the East?

A. All the men from the East.

Q. Yes. Didn't McDonough do any work as an operator?

A. No.

Q. You were the supervisor in charge at the time that these men were introduced to you?

A. It depends on what time they were introduced to me.

Q. What time was that?

A. I don't know.

Q. Was it in the morning?

A. I worked from 4 in the afternoon till midnight. If it was at that time, I was in charge.

Trial Examiner EICKHOFF. Can't you ask more pointed questions and move this thing along any faster?

Mr. EDISES. Well——

Trial Examiner EICKHOFF (Interrupting). I don't see that much of this has any bearing one way or the other.

Mr. EDISES. It might be possible if I were to——

Trial Examiner EICKHOFF (Interrupting). You are cross examining this witness. Ask him, "Isn't it a fact that such and such happened?"

Mr. EDISES. Well, possibly your suggestion is a good one, Mr. Examiner.

Trial Examiner EICKHOFF. Don't treat him so kindly. Go ahead! Get at what you are after!

1645 Mr. EDISES. I may possibly be mistaken in my approach, but at the same time I find that I have been able to establish certain points by this method.

Trial Examiner EICKHOFF. Yes; but these points that you have established haven't any bearing on the case. I have been very patient.

By Mr. EDISES:

Q. Do you know of your own knowledge whether Mr. McDonough ever worked as an operator?

Mr. MERRICK. On that point, Mr. Examiner, there is no dispute. I stipulate that he didn't work.

Mr. EDISES. Just a minute. I would rather that you didn't prompt the witness. You are not testifying.

A. He did not work under me.

By Mr. EDISES:

Q. When did you first speak to Mr. McDonough in regard to the projected meeting in the Postal clock room?

Mr. MERRICK. He didn't testify that he ever spoke to him about the projected meeting.

Mr. EDISES. Can't I ask——

Mr. MERRICK. (Interrupting.) I object to the phraseology of the question.

Trial Examiner EICKHOFF. He can ask that type of question.

A. I don't know that I did speak to him about that meeting.

By Mr. EDISES:

1646 Q. You have testified you learned about it from him, didn't you?

A. McDonough?
Q. Yes.
A. I don't believe I did.
Q. Who from?
A. I am not sure about that, either. I said I heard about it when I came to work, possibly five minutes to four.
Q. Could it have been Mr. Jorgensen that you learned it from?
A. It could have been any one in the office. The entire crew knew about the meeting. It may have been Mr. Layman. I think maybe Mr. Layman or Mr. Buckley stuck around to take care of my work while I was down there.
Q. Was Buckley—were Buckley or Layman supposed to go night shift at that time?
A. Yes.
Q. And you were to go on at four?
A. Yes.
Q. Were you docked for the time you attended the meeting?
A. No.
Q. Do you know whether Buckley or Layman——
Trial Examiner EICKHOFF. (Interrupting.) Now you are off again on another issue.
Mr. EDISES. Mr. Examiner, it seems to me that whether or not he was docked in his pay——
1647 Trial Examiner EICKHOFF. (Interrupting.) That didn't come up on direct examination from this witness. Every time he happens to mention the subject he knew, immediately you start to pursue that line. It is not proper cross examination. If you are asking him questions to test his recollection or his credibility, or show inconsistent statements, or different positions, or bias, or prejudice, or hostility, you can go off your direct examination. Otherwise you cannot.

If you are going to cross examine on the testimony he has given, you have to stick to the subjects to which he testified on direct examination.

Now, that wouldn't establish bias, prejudice, or any of those things I mentioned, to ask him whether he was docked, or somebody else was docked.

Mr. EDISES. I don't intend to ask that question for the purpose of establishing bias or not. My object in asking whether he was docked is for the purpose of establishing what part, if any, the company had in calling this meeting.

Mr. MERRICK. Did you think that he was not docked—I mean was docked? The whole thing is in the record. You are not asking him for information as to whether he was or was not docked.

Mr. EDISES. As far as my going off on a tangent is concerned,
1648 I don't intend to go off on a tangent. But it has been my experience with this witness, and others that have testified for the company, that this is the only way I can secure the information that will not come out in response to direct questions on cross examination.

Trial Examiner EICKHOFF. Of course, the subject of these substitutes wasn't mentioned on direct examination.

Mr. EDISES. Well, the meeting was certainly mentioned. Now this certainly has connection with the meeting.

Trial Examiner EICKHOFF. Not the proceedings of the meeting.

Mr. EDISES. If I am compelled to ask him questions the answers to which are perfectly obvious, he gives an answer which is likewise perfectly obvious, and is not necessarily the truth.

Mr. MERRICK. I object to that. Any slurs on this witness that you have any basis for making, let's hear them. I ask the Examiner if there is any indication where this witness has so far been a reluctant witness.

Trial Examiner EICKHOFF. I think you misunderstood Mr. Edises.

Mr. EDISES. I said he may not have stated the truth. When I ask him direct questions he gives me an answer which indicates that that particular matter has been thought out in advance. What I want to find out is some of the things he has not thought out in advance.

1649 Trial Examiner EICKHOFF. I will permit plenty of cross examination along the proper lines, but that doesn't mean starting the case all over again with this witness.

By Mr. EDISES:

Q. Do you recall what part Mr. McDonough played in the conduct of the meeting, the meeting of October 10th?

A. In the clock room?

Q. Yes.

A. I said my ideas about what the meeting was called for. I asked every one of the New York men to speak, and McDonough got up and spoke, as I have stated, telling his ideas or views of the situation in the strike. He spoke of the activities of the Relations Committee; stated that they had never had *never had* any difficulty in getting what they wanted from either Mr. Tuel, before he died, or Mr. Stone since.

Q. Now, from whom did you learn the purpose of the meeting, Mr. McLaughlin.

A. I don't know that, either.

Q. Well, now, you have testified that you were the chairman of the meeting. You presided?

A. Yes.

Q. I asked you whether you learned the purpose of the meeting. Is it possible that you presided at this meeting without knowing what the purpose of it was?

A. I didn't go down there with the intention of presiding.

1650 I said I heard about the meeting and, naturally hearing about the meeting, they evidently told me what it was all about.

Q. What did they tell you, what it was all about?

A. That it was to explain to us about the situation in New York.

Q. Now, do you remember who told you about that?

A. No.

Q. Now, you testified that you brought up the question of starting some kind of a company committee or relations' committee, or something of the sort. Who suggested that to you?

A. I don't believe it was suggested to me.

Q. Where did you get the idea?

A. Myself.

Q. It was your own idea?

A. Yes.

Q. Hadn't McDonough told you about the success of a similar system that had been in effect in New York?

A. Relations' Committee?

Q. Yes.

A. He had just finished his speech about the Relations' Committee that they had in New York, and how they went about getting what they wanted from either Mr. Stone or Mr. Tuel, before his death.

Q. That was where you got the idea of a relations' committee?

1651 A. Yes.

Q. You mentioned a company union.

A. I didn't say "company union."

Q. What words did you use?

A. I don't know. I told them in some future date they could organize among themselves, form a committee of their own, or words to that effect; but I said this: "Now, I don't think is the proper time to bring it up."

Q. Now, you have testified that Mr. McDonough said he came out—he and other strike breakers came out simply in order to keep the circuits running. Is that correct?

A. Yes.

Q. They were not supposed to be permanent employes; is that true?

A. Yes.

Q. Was there any discussion from the floor when they said that, or any questions asked of them?

A. Excepting what Mr. Rone told him, which I have already stated, about telling them—or asked him if he was going back to New York. McDonough said, "Yes," just as soon as he could get back there. Mr. Rone said, "I advise you to do so. It won't be healthy to stay here."

McDonough couldn't understand his attitude, told him about the greetings. I think it was French, in New York, that sent

1652 greetings to Rone, and Rone refused to accept the greetings.

Q. What was Mr. Jorgensen for—why was he sent after, I should say?

A. To tell the men something about why they were on the list.

Q. And at whose suggestion was he sent for?

A. I believe it was my own.

Q. Your own suggestion. Do you remember who it was who asked you about the men on the list?

A. I couldn't be positive. I seem to recall Patterson, but I am not positive that Patterson was at the meeting.

Q. Now, Mr. Jorgensen had spoken to you about this meeting in advance, hadn't he?

A. Not that I know of.

Q. Where was Mr. Jorgensen at the time he was sent for?

A. In the operating room.

Q. Where is that, is that in the same building as the Postal clock room?

A. Yes.

Q. Now, will you restate just exactly what Mr. Jorgensen said when he came in?

Mr. MERRICK. I want to call attention to the fact that he is just simply going over this just as it was on direct.

1653 Mr. EDISES. Isn't it my right, on cross examination, Mr. Merrick?

Mr. MERRICK. It is one way, but I think it is within the power of the Examiner to cut it short, to cut it to specific parts of his testimony, or else to do something else rather than to ask him to repeat everything.

Mr. EDISES. With your indulgence, I will conduct this as I feel.

Mr. MERRICK. You don't get any more indulgence.

Trial Examiner EICKHOFF. I will rule on this question at the end of a five minute recess, which is 15 minutes late.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Mr. EDISES. Read the question, please.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. MERRICK. I objected to that.

Trial Examiner EICKHOFF. Overruled.

A. He got in there and they wanted to know why he was there. I told him that the men wanted to know why they were on the list.

By Mr. EDISES:

Q. What men wanted to know?

A. Whoever asked me.

Q. Do you remember who asked you?

A. I stated that I thought it was Patterson, but I wasn't

1654 sure whether Patterson was there or not.

Q. All right. Go ahead.

A. I told him that I had already told them my personal opinion was that it was because of their attitude or inattention to the work, or something in the operating room.

Q. Now, tell me exactly what Jorgensen said as to why those names were on the list.

A. I don't believe he definitely stated why they were on the list.

Q. As a matter of fact, you refused to answer?

A. I don't recall his refusal. I said something—I don't recall his statement, but I do think he did not state why they were on the list.

Q. In other words, your former answer, in which you gave about four or five reasons and attributed them to Jorgensen, was simply not correct?

A. I believe that was my statement as to why they were on the list.

Q. No; it was Mr. Jorgensen's statement.

A. I am not sure of that.

Q. Are you as sure of the balance of your testimony as you are of this particular matter?

A. Do you mean have I been telling the truth?

Q. I simply mean this: Are there certain sections of your testimony that you are less certain of than other sections?

1655-65 A. There must be. I couldn't remember all of it. I am telling, to the best of my ability, what I remember.

Q. Can you remember any section of the testimony that you have given, which, it seems to you now, you are not quite sure of?

A. I can't recall them.

Q. Now, how did the meeting break up? What was the outcome of the meeting, do you know?

A. No. The meeting wasn't called, I don't think, to decide any particular thing. It finally got so that it was just a case of taking time out from the operating room, and somebody suggested going back to work.

Q. The meeting was called for the purpose of taking up—the idea of taking up a company union?

A. No; not that I know of.

Q. Well, you have stated that it was called for the purpose of having McDonough explain what was done in New York along these lines; isn't that correct?

A. The purpose of the meeting, as I understand it, and stated that it was to have the New York men tell us what the situation was in New York.

Q. Now, are you quite definite on that?

A. Yes.

Q. Now, who told you that?

A. I don't know.

1666 Q. You are quite definite on that but you can't remember who told you; is that right?

A. Naturally I wanted to know what the meeting was about. Whoever told me there was to be a meeting——

Trial Examiner EICKHOFF. (Interrupting.) Why were you interested in what took place in New York at that time?

The WITNESS. I think the men themselves were interested in it. They were interested to know just whether they had returned to work prematurely or whether or not if they had stayed out on strike, they had any chance of winning.

What they wanted to know was how many men went out on strike, and how many returned, and when. That was my understanding.

By Mr. EDISES:

Q. Now, Mr. McLaughlin, when did you first speak to McDonough about this round robin?

A. Time and date I cannot tell.

Q. Are you positive that it was after the meeting, as you testified earlier?

A. The meeting?

Q. After the meeting of October 10?

A. The 10th? When was the 10th? Thursday?

Q. The 10th was Thursday; yes.

A. I don't know when it was—well, I hadn't talked to McDonough about it, I know, until I got the idea from the bulletin board.

1667 Q. Who did you first speak to about it?

A. McDonough was the only one I ever did talk to about it before it was written up.

Q. It is possible that conversation was prior to the meeting at the Postal clock room, isn't it?

A. Possible; yes.

Q. Can you now place the date more definitely?

A. No.

Q. Just what was said at that time that you first spoke to Mr. McDonough about this round robin?

A. The only times that I spoke to him, as I said, was in between my busy moments, just a word or two now and a word or two then.

Q. What was the subject?

A. About how it was supposed to be done.

Q. You mentioned some bulletin on the bulletin board as having given you the idea. What bulletin are you referring to?

A. That thing——

Q. (Interrupting.) The telegram from the Relations' Committee of New York?

A. (Continuing) Telling us what they had done there and why.

Q. Now, Mr. McLaughlin, are you certain that you were the first one to mention that matter to Mr. McDonough?

1668 A. Some one else may have.

Q. I mean when the situation arose between you and McDonough, are you positive that you were the first one to bring it up?

A. I sure was.

Q. What makes you so certain?

A. It was my idea, as far as I know. He didn't put it in my head.

Q. How did you happen to speak to Mr. McDonough around there?

A. He was around there doing nothing. He volunteered a couple of times if I needed anybody to sit in on a circuit he would help me out.

Q. You never took him up on that offer, did you?

A. No; I didn't.
Q. Was he around the operating room a great deal?
A. No.
Q. He talked to you quite a lot, didn't he?
A. He was around there quite practically every day when I got to work at 4 o'clock or sometime before 6 or 6:30.
Q. How long did he usually stay around?
A. Anywhere from 15 minutes to a half hour or an hour and a half or two hours.
Q. What did he do during that time?
A. Nothing.
1669 Q. Did he just stand around in the room watching the men working?
A. Talked to different men in the room.
Q. What did he talk about?
A. I don't know.
Q. What did he talk to you about the first time he spoke to you?
A. Everything in general.
Q. And particularly this question of starting a company relations' committee?
A. Not particularly; no. I remember one lengthy conversation we had about replacing my tooth.
Q. Yes.
A. He showed me his work and suggested I have mine done that way.
Q. Ever talk about ARTA to him?
A. I probably did.
Q. Do you remember what was said about ARTA?
A. No.
Q. Well, he didn't approve of it, did he?
A. I believe he made the statement himself—that statement himself in the clock room, something to that effect.
Q. He had previously made that statement to you, had he not, in the operating room?
A. I can't say that he did.
1670 Q. You knew very well he was opposed to ARTA, didn't you? He came out here as a strike breaker, didn't he?
A. He must have been.
Q. Can you recall the first time that you and McDonough had a conversation about this round robin? Do you have that time in mind?
A. No.
Q. You can't remember definitely?
A. No.
Q. Then it is possible that he might have been the one who brought the subject up, wasn't—isn't it?
A. It is always possible, yes.
Q. As a matter of fact, he did bring it up, didn't he?

A. I still think it was my idea.

Q. But you are not certain?

A. Certainly, that is very definite. That is a very definite statement to make. I think I have already said I brought the subject up.

Q. Are you certain of it now?

A. Yes, as much as then.

Q. A moment ago you said you were uncertain.

A. I said it was possible for him to bring it up.

Q. How did you decide on the method of presenting it to the men—putting the idea to them?

A. Talked it over with him, how it was worded in New York.

1671 Q. He told you how it was worded in New York?

A. The notice also had the wording of New York's round robin in it, I believe; and in talking it over, I suggested that my own ideas be put into it, about reservation and rights of the men, and at some future time have their own organization or committee to represent them in their relations with the company.

Q. Is that the first time you got the idea of scuttling ARTA?

A. I never had the idea of scuttling ARTA.

Q. Then you don't regard this round robin as a repudiation of ARTA?

A. Only in so far as the representation of ARTA with Mackay Radio in reference to our work.

Q. Apart from that, what functions was ARTA supposed to have?

A. Whatever else they did.

Q. Have picnics on Sunday, and so forth?

A. I don't know. It depends on how they wanted to spend their time.

Q. Mr. McDonough made it clear, didn't he, that this petition couldn't seem to emanate from the company, is that correct?

A. He made it clear that the——

Q. Exactly.

1672 A. I don't get you.

Q. Didn't he make it plain that it couldn't be made to appear that that petition, or this round robin, had nothing at all to do with the company, or emanate from the company. Didn't he tell you that?

A. No.

Q. Well, the question of the company's attitude certainly came up, didn't it?

A. That would be found out after we handed it in.

Q. What did you find out then?

A. We received a letter from Mr. Rodman, I believe, acknowledging the receipt of the round robin, appreciating the action, and assuring us that we would always be welcome to come in and talk to him about anything we felt like.

Q. What reason did Mr. McDonough advance to you for circulating this round robin?

Trial Examiner EICHKHOFF. Why did he feel it ought to be circulated?

The WITNESS. I thought it ought to be circulated.

By Mr. EDISES:

Q. What was your reason?

A. To stop the ARTA from dragging me out on a strike that I didn't want.

Q. And did Mr. McDonough ever give you any statement of his reasons for wanting the round robin circulated?

A. No.

1673-5 Q. Well, he told you that he had been employed to do similar work in New York, didn't he?

A. No.

Q. What did he tell you about his New York activities in connection with petitions of this kind?

A. I don't think he ever told me anything definite about his activities on those kind of petitions. He told us that he was on the Relations' Committee, at that meeting, I think; that he was on a committee in New York to go in to see Mr. Stone or Mr. Tuel for anything they wanted. They had to set a date once a month, and if anything ever came up in between, all they had to do was to request an audience and they got it.

Q. Did Mr. McLaughlin ever tell you why in particular he happened to be sent to San Francisco?

A. No.

Q. Ever ask him that question?

A. Not straight forward like that. I tried to get around him and find out.

Q. Did you find out?

A. Not that he had any special instructions. I understand he was to come out here to work.

Q. Didn't you understand that his position was somewhat different from the other strike breakers?

A. When he didn't work in the operating room, I presumed

1676 he had some other job.

Q. Didn't you ask him about it?

A. No.

Q. Do you know what the other job was?

A. No.

Q. Did Mr. McLaughlin ever tell you what his job was in San Francisco?

A. No.

Q. Ever tell you it was solicitation, for example?

A. No.

Q. Now, who typed out the round robin?

A. McDonough.

Q. Were you present when it was done?

A. I was in the operating room. He typed it in the city office—that is, the next room to the operating room.

Q. Whose office is that?

A. At that time of night it is the service clerk's office.

Q. What officials of the company were present at that time?

A. None.

Q. Then what was done with this round robin after he typed it out?

A. He gave it to me.

Q. What did he tell you to do about it?

A. Nothing; he just gave it to me.

Q. What did you understand you were supposed to do with
1677 it?

A. Get some signatures on it—as many signatures as I possibly could.

Q. You discussed that with Mr. McDonough?

A. Probably did.

Q. Was anything said about what time of the day or night you were supposed to circulate it?

A. No.

Q. It was assumed it was to be circulated during hours—during working hours?

A. The only time we could get all the men.

Q. And about how much time did you spend in circulating the petition?

A. All together?

Q. Yes; all together.

A. Well, I wouldn't say more than half an hour over the period of three or four days it was in the office.

Q. You didn't try to hide the fact that you were circulating it, did you?

A. No.

Q. As a matter of fact, Jorgensen knew about it, didn't he?

A. He probably saw us around there getting—getting something signed up.

Q. As a matter of fact, he was present at various times
1678 when it was being circulated?

A. Yes, when he is on duty, he is always in the room.

Q. You said that Mr. Spanover and yourself did the major part of the circulating. Did some one else assist you and Mr. Spanover?

A. When it was out of my hands and not in Spanover's, it was passed from one man to another in the operating room.

Q. What did you say to Mr. Spanover when you asked him to help you circulate it?

A. I didn't ask Mr. Spanover to help me.

Q. How did he come to circulate it?

A. Got hold of it; voluntarily put his name on it, and proceeded to ask more names to sign it.

Q. He was the general office circulator, is that right?
A. That is it.
Q. As a matter of fact, he made a sort of nuisance of himself?
A. Very often he is a nuisance, yes.
Q. Do you know whether Mr. Jorgensen ever had to speak to Mr. Spanover on account of his habit of leaving his duties and circulating petitions, and so on?
A. No, I don't think he has ever been spoken to on that. In fact, the last one we tried to get up down there was for a Christmas pool, and Spanover stayed after his work hours to help get that out.
1679 Trial Examiner EICKHOFF. This is another matter, anyway.

By Mr. EDISES:

Q. Were you Spanover's supervisor?
A. While he was on, yes.
Q. Was Mr. Bash likewise under you?
A. At the time when I worked two to ten, Mr. Bash was under me from two until four.
Q. Was Mr. Palmer under you?
A. I don't know whether I worked a day trick while Palmer was there or not. If I did, I was not directly over his circuit.
Q. When you—when Mr. Bash was working under you, did you ever have to complain about his work?
A. Sometime or other I had to complain about every one's work in the operating room, but no specific things that I can recall.
Q. As a matter of fact, Bash was a first class operator, wasn't he?
A. On his circuit.
Q. Now, you stated that before you had gotten all the names on the round robin you turned it in to Mr. Jorgensen, is that right?
A. Yes.
Q. You personally?
A. Turned it in?
1680 Q. Yes.
A. I said I don't know whether I turned it in, or Mr. Spanover turned it in, but I know it went in.
Q. You testified previously to certain conversation that you had with Mr. Jorgensen, so it must have been yourself, mustn't it?
A. I testified to certain conversation?
Q. Yes, yes.
A. Didn't I say that it was turned in? I didn't know whether I did it or Mr. Spanover did it.
Q. What was the situation in regard to getting these additional names?
A. I said it was returned.
Q. You stated, did you not, that Mr. Jorgensen asked whether everybody had been given an opportunity to sign, and the reply was "No"; and thereupon the petition was taken out for more names; isn't that correct?
A. I don't recall.

Q. Now, explain that in your own terms.

A. Wait a minute! I don't recall having stated that Mr. Jorgensen told me—or asked me if every one had had the opportunity, but I know the list was returned to the operating room for the purpose of permitting those who had not signed, the chance to do so.

Q. And Mr. Jorgensen was the one who wanted everybody
1681 who had not signed to be given an opportunity to; is that right?

A. I said I am not sure whether Mr. Jorgensen told me that or not.

Q. Have you spoken to Mr. Merrick about that point since the morning session?

A. About that?

Q. Yes.

A. No.

Q. Wasn't the petition mentioned at all in your conservation with Mr. Merrick since the morning session?

A. I believe Mr. Merrick sometime said, "Hello," or "See you at 2 o'clock."

Q. Have you spoken to him about your testimony since the morning session?

A. When we left here at 12 o'clock?

Q. Yes, yes.

A. No.

Q. You now state that Mr.—that you don't know what Mr. Jorgensen said when the list was first turned over to him; is that right?

A. That is right.

Q. Did any one tell you what he said? Did Spanover tell you what he said?

A. No.

Q. Well, now, after the list was turned back to you——
1682 A. (Interrupting.) Yes.

Q. (Continuing.) Did you take it out and get some more names?

A. I think—H.—Henry King, a check boy, signed it. Shackelford, I am not sure, I believe he was in—I believe he was another check boy who signed it after it came back. So I know there were some more names added to it.

Q. When was it taken out and circulated again after it was turned over to Mr. Jorgensen?

A. I believe it was the company's intention to allow or make sure that everyone had had that opportunity.

Q. What is the basis of your statement that such was the company's intention?

A. That is what I had heard Spanover or somebody else say, that that is the reason it came back.

Q. There wasn't any doubt in your mind after you took it out and recirculated that, that that was the reason?

A. No.

Mr. MERRICK. I will stipulate, if you like.

Mr. EDISES. What will you stipulate to, Mr. Merrick?

Mr. MERRICK. That the company was perfectly willing to see every one who wanted to, see it if he wanted to. In fact, anxious.

Mr. EDISES. Is that correct?

Mr. MERRICK. Well, not overly anxious.

By Mr. EDISES:

1683 Q. Have you spoken to Mr. Rodman since the strike?

A. Certainly.

Q. In connection with your activities in getting these men back to work?

A. No.

Q. Have you spoken to him in regard to any matter connected with the strike, or getting the men back to work, or the meeting at the Bellevue, or the round robin, or the meeting at the Postal clock room? Have any of those matters come up in your discussions with Mr. Rodman?

A. Directly with Mr. Rodman?

Q. Yes; directly with Mr. Rodman.

A. The only direct talk that I have had with Mr. Rodman regarding anything during that time, I think, was concerning my report to him after the assault on me.

Q. You haven't spoken to him in regard to anything other than that?

A. That is practically all.

Q. Did Mr. Rodman express any opinion as to who was responsible for the assault on you?

Trial Examiner EICKHOFF. I won't allow that.

Mr. EDISES. All right, I will withdraw the question.

By Mr. EDISES:

Q. Have you spoken to Mr. Jorgensen since the return to work in regard to the same matters that I have indicated previously?

1684 A. Certainly.

Q. And in regard to all of those matters?

A. I talked to him about the Bellevue Hotel.

Q. When was the first time that you discussed the Bellevue Hotel meeting with Mr. Jorgensen?

Mr. MERRICK. I object to this. In what way is this material? Certainly it isn't.

Trial Examiner EICKHOFF. Well, he has said that he has talked to him, and rather than review each one of these conversations in detail, if there is something——

Mr. EDISES. (Interrupting.) All right; O. K.

By Mr. EDISES:

Q. Did Mr. Jorgensen ever congratulate you on the part that you played in getting the men back to work?

A. I think I told just about every one of my acquaintance that it was the first time in my life that I ever stood up in a meeting and addressed a number of people. They congratulated me upon my actions. I did pretty good.

Q. Mr. Jorgensen congratulate you?

A. Every one; Mr. Jorgensen, Captain Dodd, my wife, and all of my friends, and the operators in the operating room.

Q. Did Mr. Rodman ever congratulate you?

A. I believe he hasn't as yet.

Q. Don't you think you have some congratulations coming in that respect?

1685 A. I think I did pretty good.

Mr. EDISES. (To reporter.) Did you get that?

The REPORTER. Yes.

Mr. MERRICK. Very significant. Can't you underline it?

Mr. EDISES. O. K. We'll have that in red ink on the record, Mr. Merrick.

By Mr. EDISES:

Q. Do you wish at this time to change, in any way, any of the testimony that you have given on the witness stand?

A. Not that I know of.

Q. Have you anything to add to any of the testimony that you have given?

A. I wanted to add to the Examiner's questioning me about my feelings about the union, but I believe you brought that out.

Q. And what are your feelings about the union?

A. You asked me when I joined how I felt about it, and why I changed my opinion, I think was the meaning of your question. I first explained to you that I thought that they had changed their policies since I joined, or words to that effect.

Q. Did you specify in what particular they had changed their policies since you joined?

A. I told you that when I joined, the point to point was 1686 to be point to point, and nothing else.

Q. Now it is something else?

A. That is my understanding of it, that it is.

Q. What is it now?

A. Affiliated with the marine operators of ARTA.

Q. What do you mean by affiliated?

A. Associated with them.

Q. Isn't it a fact that when you joined the point to point division you knew that there was a marine division of the ARTA?

Mr. MERRICK. Do you think it is proper to pursue this line?

Trial Examiner EICKHOFF. No; I don't think so. Do you think it is necessary? There is no question but what you disagreed with the union.

The WITNESS. Their actions, that I considered unfair during the strike; yes. I didn't agree with those.

By Mr. EDISES:

Q. Have you stated all of the respects in which you felt the actions of the union were unfair during the strike?

A. That is about all I could get out—yes.

Q. I have one further question for you, Mr. McLaughlin: You used the phrase, speaking of Mr. Rone—no, I believe, it was in connection with your conversation with him the morning that the
1687 men came back to work. You said inasmuch as Rone had "so much to do with the union," and then made some further comment. Do you remember using that expression?

A. Yes.

Q. What did you have in mind when you used that expression?

A. Just considered him semi-official—a semi-official of the union, and I was handing my verbal resignation to him.

Q. Did you feel that Mr. Bash and Mr. Palmer and Mr. Loudermilk and Mr. Salisbury were about on a par with Mr. Rone in that respect?

Mr. MERRICK. I object to that question.

Trial Examiner EICKHOFF. Sustained.

Mr. EDISES. I believe that is all, Mr. Examiner.

Mr. MERRICK. No further questions.

Trial Examiner EICKHOFF. May this witness be excused now?

Mr. MERRICK. Yes.

Trial Examiner EICKHOFF. You may be excused.

(Witness excused.)

Trial Examiner EICKHOFF. There is no use starting anything further this afternoon—five minutes to four.

Did you have any witness?

Mr. MERRICK. I have Captain Dodd ready.

Trial Examiner EICKHOFF. Well, I guess the Captain will be kind enough to return in the morning.

1688 Captain DODD. I have been here every morning so far.

Trial Examiner EICKHOFF. 10 o'clock tomorrow morning.

(Thereupon, at 3:57 o'clock p. m., the hearing in the above-entitled cause was adjourned until 10 o'clock a. m., Wednesday, December 18, 1935.)

1689 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Wednesday, December 18, 1935.

Met pursuant to adjournment at 10:10 o'clock a. m.

Colloquy

Trial Examiner EICKHOFF. Are you ready, gentlemen?

Mr. MERRICK. Ready.

Trial Examiner EICKHOFF. Will you produce your next witness, then?

Mr. MERRICK. Captain Dodd.

First, I would like to ask counsel for the Board if he has the rest of the minutes and the official circulars and propaganda that
1690 was put out by the union in connection with the strike.

Mr. EDISES. I am not prepared to say whether it is of an official nature or not. I have done the best I can in checking the material you asked for.

Mr. MERRICK. Have we copies of all the minutes?

Mr. EDISES. All of the minutes that are available, and all of the minutes that have been turned over to me.

Mr. MERRICK. From the period of February 1934, up to the strike?

Mr. EDISES. So far as they are in existence and have been turned over to me. I understand that during a certain period in the early part of the organization's history the minutes were carried around by a Mr. Mathison who was the secretary of the organization, and that on Mr. Mathison's termination of his connection with the organization certain of the early minutes went with him and have not been available since. However, all the minutes since Mr. Mathison ceased his connection with the organization are, I believe, included in those that I have obtained.

Mr. LIVINGSTON. May we have those that you have now?

Mr. EDISES. Yes.

Mr. LIVINGSTON. I suggest, if agreeable to counsel and the Examiner, the interrogation may proceed and counsel may hand the minutes over to me and I will look at them during lulls and recesses.

1691 (Counsel Edises handed to Counsel Livingston certain minutes referred to.)

EDWIN H. DODD, called as a witness for the respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Direct examination by Mr. MERRICK:

Q. Are you an employee of the Mackay Radio and Telegraph Company?

A. Yes.

Q. In what capacity are you employed?

A. I am secretary of the company and, under Mr. Rodman, I am purchasing agent and Mr. Rodman's assistant for traffic. Mr. Jorgensen reports to me on the H. B. operating room. I am charged with the receipt, custody, and distribution of all general orders, codes, and other literature of a general nature; and I also have charge of all correspondence and work in connection with licenses to stations in the California company.

Trial Examiner EICKHOFF. Have you any title other than secretary?

The WITNESS. Yes; purchasing agent.

By Mr. MERRICK:

Q. How long have you had those duties, Captain Dodd?

A. I have been purchasing agent since April 15, 1929; secretary, October 10 or 11, 1931.

1692 Q. How long have you been——

A. (Interrupting.) Traffic assistant since January 1930. In charge of the H. B. operating room—that was added to that about six months later.

The duties in connection with codes and general orders, and so forth, came at the same time that I was made secretary.

The duties in regard to licenses were transferred to me from the marine superintendent, I think, in the fall of 1929. I am not certain.

Q. How long have you been connected with the company, or its predecessor company?

A. Oh, as an employee since April 15, 1929.

Q. How long have you been connected with the radio industry, radio and telegraph industry?

Mr. Edises. Are these questions particularly pertinent? We are willing to concede that Captain Dodd is an expert in the radio industry, and whatever qualifications he wishes to establish.

Trial Examiner Eickhoff. I will allow the question.

A. Directly in radio since 1908; indirectly since 1898.

By Mr. Merrick:

Q. You were in the navy for a period of time?

A. Thirty years; I am still in the navy.

Q. What rank, what was your rank last?

A. Captain, and still am.

1693 Q. Were you present at 22 Battery street in your office Tuesday, October 8th, between 10:30 in the morning and 7 o'clock in the evening?

A. I was, with the exception of about an hour and a half, and that time approximately was from a little after 4 o'clock until 5:30.

Q. Do you know what time Mr. Jorgensen left on Tuesday?

A. He left about—he left between 10 and 10:30.

Q. And were you in active charge, during his absence, of the H. B. office?

A. Yes. I relieved him from his duties in the H. B. office, and, with the assistance of a supervisor named Buckley, handled the H. B. office affairs during his absence.

Q. What connection did you have with the re-employment of the men who came back at about that time?

A. Mr. Buckley was to report to me as fast as any of the men returned for duty.

Q. Who prepared the applications that the men signed for re-employment?

A. I did. I had my stenographer prepare them.

Q. Were you informed from time to time as the men came in during the day applying for their positions?

A. I was.

Q. Can you tell me at what time the last man was accepted for re-employment?

1694 A. At 4:00 p. m.

Q. And what took place at about that time?

A. Mr. Buckley reported that this check clerk, named King, had reported. I had made notes during the day of these men as they reported, and then I asked Buckley to give me a typed list of the men that reported so that I could check it with my notes. Instead of having a bunch of small papers I wanted a typed list that I could refer to.

Q. Did you have any conversations with Mr. Rodman after 4 o'clock?

A. Yes. When I came in about 5:30 I went to Mr. Rodman's office.

Q. What did you tell him?

A. There were two men from Chicago in there at the time and I asked these two men, White and Senseman, if they wished to remain on duty at San Francisco, and each of them said "Yes."

I then went into my own office and checked against the information I had. I went back to Mr. Rodman's office—the lapsed time was only a few minutes—and told him there were no more vacancies; with 64 men having reported back—that was up to 4 o'clock—with one man from Los Angeles whom I had found out during the day personally was going to remain, with the two men who were going, that is, who had just told me—they were from Chicago—told me they were going to stay, and with information which Mr. Stone
1695 had given me by telephone earlier in the day that probably two and maybe three of the New York men would wish to remain in San Francisco—there were 68 men employed in the H. B. prior to the strike—and that this gave a total of 69.

Moreover, there was a possibility of being over-staffed if the traffic load decreased to what it was prior to the strike when we employed 68 men.

I told Mr. Rodman that there were no more vacancies.

Q. Did you tell Mr. Rodman who had not yet applied for re-employment up to that time?

A. I believe I did.

Q. Did you tell him what men had been taken back temporarily on the basis of their names being on this list?

A. Not at that time. I told that to him in the afternoon.

Q. They had come in earlier?

A. Yes.

Q. He knew then the number, the names of the men on the list who had re-applied for re-employment?

A. Yes.

Q. You say that before the strike you had more men at the H. B. office than were necessary?

A. No; I wouldn't say that. We had practically the required number of men to handle the traffic load as it was at that time, 68, I believe. Not, "I believe"—I know it was 68.

Q. What was your opinion at that time as to the volume of
1696 traffic that you were likely to have during the next few days or weeks?

A. My opinion was there was a possibility of a decrease.

Trial Examiner EICKHOFF. Decrease over what?

The WITNESS. Decrease under the present load we had prior to the strike.

By Mr. MERRICK:

Q. You mean——

Trial Examiner EICKHOFF. Hadn't it already decreased?

The WITNESS. During the strike it had decreased enormously, but when the men came back and the circuits were all opened and running again, it seemed to me there was also a possibility of a decrease in the total load of messages handled during any one day.

By Mr. MERRICK:

Q. On what basis did you have information—I mean, did you think it was due to general business conditions?

Mr. EDISES. I object to Mr. Merrick's prompting him.

A. I can give the answer, but I want to think it over. It seemed to me that, with certain circuits having been stopped, would be news to customers that there had been a strike and difficulties, there was very easily a possibility that some people who had used Mackay Radio before the strike would not use them after the strike, or would not use the Mackay Radio service to as large an extent.

1697 Of course, this is absolutely a matter of opinion or belief, or judgment. I don't think business conditions as such entered into my thoughts.

By Mr. MERRICK:

Q. What time did Mr. Jorgensen come back?

A. I believe it was around 7 o'clock that night.

Q. Did you have a conversation with him?

A. He came into my office.

Q. What did you tell him as to what had transpired while he was away?

A. I told him the men had come back at varying times up to 4 o'clock, including this check clerk, who came back at 4 o'clock. That I had found out that a man named Cole, from Los Angeles, wished to remain on duty in San Francisco; that two Chicago men, White and Senseman, informed me that they wished to remain in San Francisco; and that Mr. Stone had told me that two, perhaps three, of the New York men would wish to remain; and that made a total of 69, and that I had informed Mr. Rodman that all vacancies were filled and the books were closed.

Q. Do you know whether Mr. Rodman communicated with Mr. Stone between your conversation with him and your conversation with Mr. Jorgensen?

A. Yes.

Q. Do you know what transpired? What did Mr. Rodman tell you as to what transpired?

A. Mr. Rodman told me that Mr. Stone had given him
1698 blanket approval of the steps that had been taken, including the temporary reinstatement of these men whom we had taken back, subject to Stone's approval, and that their re-employment was approved.

Those may not be the exact words, but they were the sense of the communication that Mr. Rodman told me.

Q. Well, did he tell you that these men that had been on the list, that had come in during the day, were then permanently employed, or were they still temporarily employed?

A. Their status was no longer temporary; they were permanently employed. I told that to Mr. Jorgensen, with the other information I gave him.

Q. Did you ever meet Mr. McDonough, Captain Dodd?

A. Yes; and——

Q. (Interrupting.) That is all I want to know. Did you ever have any conversation, correspondence, or give Mr. McDonough any communication of any character whatsoever for the purpose of inducing him to interfere with or block, or prevent, any of the activities of ARTA, or did you ever discuss with him, or suggest any such activities on his part?

Mr. EDISES. I object to the question on the ground that it is, in the first place, leading; and, in the second place, very complicated and complex.

Trial Examiner EICKHOFF. I will allow it. You can cross examine on it.

1699 A. The question is very clear to me because the answer is "No."

By Mr. MERRICK:

Q. Without repeating the question, can you answer it as to certain other men whose names I will give you, Mr. Spanover?

A. No.

Q. Mr. Burtz?

A. No.

Mr. EDISES. I understand that the same objection applies to all this?

Trial Examiner EICKHOFF. Yes.

By Mr. MERRICK:

Q. Mr. McLaughlin?

A. No.

Q. Mr. Hatch?

A. No.

Q. Any other employee of the Mackay Radio Company?

A. No.

Examination by Trial Examiner EICKHOFF:

Q. Did you ever discuss the labor problems of the company with any of those men?

A. With any of those men; no.

Q. Or ARTA?

A. No.

Q. Or a company union?

A. No; no company union.

1700 Q. Or a Relations Committee?

A. No. I would like to qualify that; perhaps it might be advisable. In the first place, if I had wanted to make, or to hold such a discussion, it would have been against my judgment to have taken any such action or to have held any such conversation.

In the second place, I don't believe at any time I felt any desire to discuss those questions with them.

Q. That is hardly a qualification of your answer.

A. An explanation.

Q. Your reason for not doing it?

A. Yes; my reason for not doing it.

By Mr. MERRICK:

Q. Did you ever have any conversation, correspondence, or communication with Mr. McDonough wherein the discouragement of membership in ARTA was considered or discussed?

A. No.

Q. Or when anything was said, written, or done, looking toward activity by Mr. McDonough in opposing or interfering with, or ending, the strike?

A. No.

Q. Can you answer that same question in regard to these other names, or do you want me to repeat the question?

A. The answer is "No," not only of the other names, but anyone else.

1701 Q. You never at any time asked or suggested to anyone that they try to discourage any of the union activities or membership in the union?

A. I never discussed the union activities with anyone during the time of the strike, or after the strike, that I now remember.

Examination by Trial Examiner EICKHOFF:

Q. There wasn't discussion between you and Mr. Rodman or Mr. Jorgensen concerning the union activities?

A. That is rather hard to answer. I understood Mr. Merrick's question to apply to——

Q. (Interrupting.) Employees.

A. (Continuing.) Actually, employees of the company, other than the officers.

Q. But you did discuss the strike and union activities with Mr. Jorgensen and Mr. Rodman from time to time, I suppose?

A. No. What they were doing during the time of the strike, yes; prior to the strike I can't remember at any time we discussed it. I have no recollection, after the strike of having made, having had a particular discussion with them.

By Mr. MERRICK:

Q. Did you ever discuss at any time with Mr. Jorgensen or with Mr. Rodman, the taking of any action looking toward the discouragement of the union, or membership in the union?

1702 A. No. Did I discuss it?

Q. Yes; with Mr. Jorgensen or with Mr. Rodman, any plan for taking any action to discourage the union, or membership in the union?

A. I may have discussed the union with them, but I never discussed any plans to take any action discouraging membership in the union.

Q. Did you at any time discriminate or authorize or permit anyone else to discriminate in regard to whether a person belonged to ARTA, or did not belong?

A. Absolutely not.

Examination by Trial Examiner EICKHOFF:

Q. Did you ever instruct Mr. Jorgensen, or anyone else, that the men were to be treated on an equal basis?

A. No; I can't say I gave him those instructions.

Q. Do you know of any such instructions having been given to Mr. Jorgensen?

A. I know Mr. Jorgensen's attitude was that——

Mr. EDISES. I object to the characterization of Mr. Jorgensen's attitude and ask that that go out.

Trial Examiner EICKHOFF. I think it is harmless.

A. I can change it and say Mr. Jorgensen had told me on different occasions he had that attitude.

By Trial Examiner EICKHOFF:

1703 Q. The matter of handling the return of the men was left to Mr. Jorgensen, wasn't it?

A. Yes, except from the time he went home to Burlingame until he came back at 7 o'clock, it was mine.

Q. But so far as you know, when he went to the Bellevue Hotel he had full power to deal with the situation as he saw fit?

A. I didn't know he had gone to the Bellevue Hotel until, maybe, some time between half past six and seven on the morning of the 8th.

Q. But as far as you learned later, he had authority to handle the matter in his own discretion?

A. Oh, yes. It was his job and what he did, he told me briefly what had happened some time during the morning of the 8th before he went home.

By Mr. MERRICK:

Q. Did you ever have any conversation, correspondence, or other form of communication with Mr. McDonough, which, in any way, involved any activity on the part of Mr. McDonough looking toward the formation of a union, other than ARTA, or an organization of the company employees, or the selection of a Relations Committee, or any other committee, with the general idea that any such union, committee, or group would represent the employees in dealing with the company?

A. No; I had no conversation or correspondence with Mr. McDonough about that.

1704 Q. Or with Mr. McLaughlin?

A. No.

Q. With Mr. Hatch?

A. No.

Q. With Mr. Burtz?

A. No.

Q. With any other employee of the company?

A. No; except, if you are going to include Mr. Rodman and Mr. Jorgensen, yes.

Q. When were those conversations?

A. I don't know.

Q. Well, before the strike or after the strike, during the strike or what?

A. They were after the strike at various times. I don't think I can decide on any particular date or time when they were held. I can give high lights of what was said, to the best of my knowledge.

Mr. EDISES. Just one moment, Captain Dodd. Are you testifying now to a certain conversation at a certain time? Can we definitely have established the time, place, and persons present?

Trial Examiner EICKHOFF. He said he couldn't do it.

Mr. EDISES. I object to his telling that conversation then.

Mr. MERRICK. I am perfectly willing——

1705 Mr. LIVINGSTON. (Interrupting.) I suggest to the Examiner that the inability of the witness to fix the time, place, and persons present does not throw out the conversation.

Mr. MERRICK. However, I have no argument. If he wants to object to the testimony, I am perfectly willing that the objection be sustained.

Mr. EDISES. Can't you have him fix the time?

Mr. LIVINGSTON. He said it was after the strike.

Mr. EDISES. A day or so after the strike.

Examination by Trial Examiner EICKHOFF:

Q. Do you know within what general period these conversations took place?

A. Perhaps within ten days or two weeks.

Q. After the strike?

A. After the strike at different times.

Q. And I have forgotten the question now—What did these conversations concern; what were they supposed to concern?

By Mr. MERRICK:

Q. Mr. McDonough's activity in connection with the organization of a Relations Committee, something of that nature.

A. No; I never had any conversation with Rodman or Jorgensen about that.

Q. Isn't that the question?

Trial Examiner EICKHOFF. I don't recall the question.

1706 The WITNESS. But I did have a conversation with them regarding activities in connection with the strike, other than McDonough's.

Mr. LIVINGSTON. May I have the last answer read?

(The answer referred to was read aloud by the reporter as above recorded.)

Mr. LIVINGSTON. Thank you.

By Mr. MERRICK:

Q. What are the conversations to which you are referring?

A. Well, I was trying—I was trying to write up a story of how the strike affected traffic conditions. The data accumulated during the period of the strike was very meagre. In order to get a proper picture and put it down so it would be of some value at some future time I had to use every source that I could to obtain such a picture. I not only asked Mr. Jorgensen and Mr. Rodman, but I asked traffic managers and district managers at other points, both by letter and by wire, particularly having to do with the amount of traffic that was handled, and the amount of traffic that may have been diverted to Postal during the hours at which circuits were interrupted and transmitters were not working.

I can go on at great length, but I don't see any use in it.

1707 Mr. MERRICK. If the Examiner is willing, I would just as soon have that answer stricken out as unresponsive and not helpful in the record.

Mr. EDISES. I object to it being stricken.

Mr. LIVINGSTON. Let it stay.

Mr. MERRICK. He just misunderstood what the question was and I don't think it adds anything.

Mr. EDISES. The question was broad enough to include it.

Trial Examiner EICKHOFF. Whether it is stricken or not, it will be in the record.

By Mr. MERRICK:

Q. The question that I asked you, Captain Dodd, was whether you had any communication with these people in regard to the formation of some other unit than ARTA to represent the men in dealing with the company.

A. I did not, and that includes Jorgensen and Rodman.

Examination by Trial Examiner EICKHOFF:

Q. Do you know anything about the circumstances under which McDonough was selected to come out here?

A. No; except that I know he was one of the men who volunteered in New York for duty in San Francisco and was sent out here by Mr. Stone.

Q. You don't know whether he volunteered or not, do you to your own knowledge?

A. I only heard it.

By Mr. MERRICK:

Q. From whom did you hear that?

1708 A. Mr. Rodman, I believe.

Q. Have you any knowledge whatsoever of any activity engaged in by Mr. McDonough, at your request, or the request of any other official of the company, other than activities which are the part of any employee of the company?

Mr. EDISES. I object to that question. It is extremely vague and indefinite.

Mr. MERRICK. All right, I am willing to rephrase it.

Mr. LIVINGSTON. Let's get a ruling on it. I think it is a perfectly competent question.

Trial Examiner EICKHOFF. Let's have counsel get together. Mr. Merrick was willing to rephrase the question. Who's who over there?

Mr. MERRICK. I would rather rephrase the question.

By Mr. MERRICK:

Q. Well, other than such activities as you regard as being the normal and usual activities of any employee of the company?

Mr. EDISES. Same objection, Mr. Examiner.

Trial Examiner EICKHOFF. I will allow the question and you may note it on cross examination.

Mr. EDISES. It calls for a conclusion of the witness.

A. No; I know of no such activities.

By. Mr. MERRICK:

Q. Do you know what Mr. McDonough did do while he was here in San Francisco?

1709 A. Yes. Mr. Jorgensen told me he had relieved him, released him to Mr. Rodman for solicitation work.

Q. Did Mr. Rodman ever tell you what he was doing?

A. Yes. He told me he was doing solicitation work in connection with stock exchange customers.

Q. Did you ever hear Mr. Rodman say he was doing anything else?

A. No.

Q. And you know of nothing else that he did do while here, at the suggestion or request of any official of the company?

A. I know of none.

Trial Examiner EICKHOFF. Is there anything unusual about a temporary employee out from New York being assigned to solicitation work in the community?

The WITNESS. I don't think it was in this case, because Mr. McDonough was the man who originated the stock exchange office a good many years ago for the Federal Telegraph Company.

By Mr. MERRICK:

Q. And was he understood to be acquainted with the various customers of the stock exchange office?

A. I believe so.

Q. Do you know whether Mr. McDonough's home was here in San Francisco?

A. Yes. His father and mother live somewhere down the peninsula.

1709-A Q. And they were here while he was—they were living here when Mr. McDonough came out here?

A. Yes.

Q. Do you know whether he visited his parents while he was here?

A. Yes.

Q. Do you know whether he was given a few days' vacation for that purpose?

A. Yes.

Trial Examiner EICKHOFF. Was he?

The WITNESS. Prior to his return to New York he was given a few days to visit his parents.

By Mr. MERRICK:

Q. Do you know of any request, or instructions, or communication of any kind being given to Mr. Spanover, Mr. Burtz, Mr. Hatch, or Mr. McLaughlin in regard to their taking any action in connection with the strike, or the termination of the strike, other than their return to work?

A. I know of nothing of that nature.

Q. Have you in any manner whatsoever taken any steps or done anything, or written any letter, or telegram, or engaged in any conversation, the purpose of which was to discourage any person from joining the union, or to encourage them in joining any other group or organization?

A. No.

1710 Q. Have you ever employed, hired, retained, or otherwise directed any person, with a view to having that person join the union or attend its meetings and report on union activities, to you?

A. No.

Q. Do you know of an occasion when any other representative of the company did anything of that kind?

A. I know of no such occasion.

Q. Have you ever authorized the payment, or permitted the payment of the union dues of any employee by the company?

A. No.

Q. Have you ever employed, or known of the employment of any spy or person generally known as a stool pigeon on behalf of the company in connection with its relations with the union, in connection with the conduct of the strike, or in connection with any activities by the company's employees?

A. No.

Q. Have you ever done anything to interfere with the strike activities of ARTA, except to re-employ men in place of strikers and to take back the men themselves when they asked for re-employment?

Do you want the question re-read?

A. No. I tried to persuade three supervisors from going out on strike, and I tried to persuade Mr. McLaughlin to come back
1711 to work during the strike. Outside of that, no other activities.

Q. Have you ever done anything to interfere with any person joining the union, or remaining a member of the union?

A. Never.

Q. Have you ever suggested, encouraged, or in any way fomented the idea of holding a meeting to terminate the strike, or induce the men to return to work?

A. I did not.

Q. I believe you said you never heard of the Bellevue Hotel meeting until after it was all over.

A. Some time between 6:30 and 7:00 on the morning of the 8th.

Examination by Trial Examiner EICKHOFF:

Q. Did you consider that the men returning to work after that Bellevue meeting was beneficial to the company?

A. Absolutely.

Q. And you believe, don't you, that certain men were largely responsible for that meeting in leading the men back to work?

A. I do now.

Q. You do now?

A. I do now.

Q. Do you know of the company ever having held out any inducement or reward to those men for bringing the others
1712 back to work?

A. No; I am sure there hasn't been anything like that done.

Q. You know of nothing to your knowledge?

A. I can say more; not only to my knowledge, but I believe I would have heard of it if such a thing happened, and I haven't heard of any such thing.

Q. Would, so far as you know, the entire truth be that in that case the men's interests, that is, the leaders of this return-to-work movement, their interests and the company's interests, merely happened to coincide?

A. Yes.

Q. That would be the whole truth as far as you are concerned?

A. Yes. If the men wanted to go back to work and hold their jobs, the company wanted them back in order to get the business going.

Q. But as between the company and the leaders at that Bellevue meeting, there was nothing that you know which prompted them to act as they did, except their own interests?

A. No, I don't know of anything.

By Mr. MERRICK:

Q. Were any of these men who were active in inducing the men to return to work in any way compensated by the company, or given any special reward or privileges?

A. As far as I know they were not, and I believe if there had been such a thing I would have known of it.

1713 Examination by Trial Examiner EICKHOFF:

Q. Now, McDonough was offered something special, wasn't he?

A. You mean the solicitation?

Q. Well, he came out from New York and came in a rather special and privileged status, didn't he?

A. No, he came out from New York, as I understand, on the same status as any other operator; that is, that we would put him to work in the H. B. as an operator commensurate with his ability, which, I think, was that of a Class C man.

Mr. Rodman asked Mr. Jorgensen to release McDonough to him for solicitation work, so Mr. Jorgensen informed me. Later Mr. Rodman confirmed that; that he wanted him for solicitation work. He was using him for solicitation work.

Q. Did McDonough return to work shortly after the strike?

A. He returned on the—I can give you one of three dates—the 28th, the 29th, or the 30th, and I don't know which. He was given a few days' leave shortly before his return. I know that because I obtained his transportation.

Q. Was there no special inducement offered to the men who came out from New York to substitute during the strike?

A. There was no special inducement offered the New York men any more than there was to the men from Los Angeles or to the men who remained on duty.

1714 In accordance with Mr. Rodman's instructions to Mr. Jorgensen and to myself, based on instructions he had received from Mr. Stone, the men were given—and by "the men" I mean the men that remained at work in the H. B. during the period of the strike—the men who came up from Los Angeles and the men who came out from New York and Chicago were given straight time pay for eight hours' work; they were given double time for any overtime work in addition to eight hours, and if they remained in the building for rest or sleep they were given half pay during such periods.

Q. Do you know what would move a man under those conditions to go into a strike area and transfer into it and substitute for men who were out on strike?

Mr. MERRICK. You mean what would move them, or probably did?

Trial Examiner EICKHOFF. Would, or did in this instance.

A. The New York men, I don't know what pressure, if any, was brought to bear. In regard to the men who remained at work in H. B., I asked them to stay at times. Probably Mr. Jorgensen did too.

I know that the three supervisors on Sunday wanted to go out. I asked them not to go because we needed them for traffic the next day.

1715 The men coming up from Los Angeles were handled by Mr. Rodman over the telephone with Mr. Price, the district manager. Whether it was volunteered by Mr. Price that some of his men wished to come up here and help conditions in order to handle traffic, or whether Mr. Rodman asked him to obtain volunteers or not, I don't know. But the men came up by plane on the noon and afternoon of Saturday, the 5th, and they were put to work as soon as they came to the office.

By Trial Examiner EICKHOFF:

Q. I am not so interested in what the details were of what they did, but what would induce them, under those conditions, to come into a strike area and into an office where a strike was in effect, and take the place of strikers.

A. Well. Just as an opinion, it was probably a question of loyalty involved there, loyalty to the company.

Q. Would you say that that would be loyalty above average, or unusual loyalty?

A. No, it would not; to me it wouldn't. I would do the same thing if I were in their place.

Q. But you had all the men in this office walk out?

A. No, we didn't have all of them walk out right away. We had three that went out on Sunday, and we had two men that stayed there throughout, although they were both Class D operators.

1716 We had one man that came back early Saturday morning and stayed there until Sunday and then went out and didn't come back. We had another chap that worked in there Saturday and Sunday and went out about the same time the three supervisors did. We had another supervisor that came in early Saturday morning and went out later that same day and didn't come back.

By Mr. MERRICK:

Q. Captain Dodd, perhaps I can ask you a few questions in that connection. Do you know whether or not the office in New York was unionized to the same extent it was here in San Francisco?

A. I don't think it was, but I am not certain.

Q. Don't you know that men went from this union here in San Francisco to New York to try to organize it?

A. There was one man that did.
Q. Who was that?
A. Loudermilk.
Q. Wasn't there another man that went there?
A. Another man went there later, Salisbury.
Q. When did he go?
A. I don't know. I think it must have been——
Q. (Interrupting.) He was there during the strike?
A. Yes. He had three months' leave.
Q. Do you know whether any of the volunteers who came from New York had originally lived in San Francisco?
A. I knew McDonough had.
1717 Q. Do you know whether——
A. (Interrupting.) One other man had, too.
Q. Do you know anything about Mr. Dugan, whether he had?
A. Dugan had; he attended the University of California.
Q. Sometimes mere California sunshine is enough to induce a man to come to California, isn't it?
A. It would me.

Examination by Trial Examiner EICKHOFF:

Q. But you don't get much of it when you are locked up in an office twenty-four hours a day, do you?
A. No.
1718 Q. What is Mr. McDonough doing now, do you know?
A. He went back to New York and is working in the New York office.
Q. Do you know what his capacity is at present?
A. As an operator.
Q. As an operator?
A. Yes; as an operator.

Trial Examiner EICKHOFF. I think we had better take a five-minute recess.

Mr. LIVINGSTON. May I have the minutes for the 19th and 20th meetings of the ARTA, and also the minutes of any meetings subsequent to September 29, 1935?

Mr. EDISES. I believe that one of the two sets of minutes that you have asked for is in evidence. The other, which I believe are the minutes for the meeting of August 20th, are not available, cannot be found.

Trial Examiner EICKHOFF. We will take a recess now.

(At this point a recess was taken; after which proceedings were resumed, as follows:)

Trial Examiner EICKHOFF. You may proceed.

Mr. LIVINGSTON. Before the evidence proceeds, it appears there is just one meeting, the minutes of which have not been supplied to us. That is the meeting of December 6th. I will ask the Examiner to request counsel to let us have a copy of those minutes.

1719 Mr. EDISES. Is this on the record?

Trial Examiner EICKHOFF. Yes.

Mr. EDISES. My only reason for demurring to Mr. Livington's request is that inasmuch as he has not specified any particular relevancy, or any particular purpose for which he desires the minutes of a meeting as late as December 6th, at which time I understand there was a meeting, his request constitutes nothing more than an attempt to engage in what is known as a fishing expedition, a purpose which is not regarded by the Supreme Court of the United States as a legitimate one.

A further reason is that those minutes specify names, names of men who are at present employed by the Mackay Radio, and there is cause to believe that the divulging of those names may possibly result in some prejudice to the men who are thereby indicated to be active in union work.

For those reasons I feel that my position must be that I must decline Mr. Livingston's request.

Mr. LIVINGSTON. All right, I will answer both arguments separately.

The first one is——

Trial Examiner EICKHOFF. Do you think I have any power in the matter, or are you just saying this for the record?

1720 Mr. LIVINGSTON. For the record, and I will take a ruling from the Examiner as to whether we are entitled to them, and I would ask the Examiner to take whatever steps may be necessary to issue a subpoena, if he, the Examiner, feels we are entitled to them.

Trial Examiner EICKHOFF. I don't think I have any power in the matter whatever.

Mr. LIVINGSTON. Then the Examiner can at least make a request and continue the case for three months until we can test the question out as to whether we get those minutes or not.

I want to make myself clear on the subject first.

Mr. EDISES. Is that a threat, Mr. Livingston?

Mr. LIVINGSTON. It is a promise.

Trial Examiner EICKHOFF. The regulations provide, Section 20, page 7:

"Subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, that relates to any matter under investigation or in question, may be issued by any member of the Board. Application for the issuance of such subpoenas may be filed with The Regional Director by any party to the proceedings. Such applications shall be timely and shall specify the name of the witness and the nature of the facts to be proved by him, and must specify the documents, the production of which is desired, with such particularity as will enable them to be identified for purposes of production."

1721 That expressly confers on the Board the power to issue subpoenas. I find nothing in the Act, in the regulations, which would imply that I would have the power.

Mr. LIVINGSTON. I will get the record if I get a ruling on it. Don't let that worry you. I will get the document, if I get the ruling. I would like to be heard on the subject, if I can get a ruling that this is a proper request.

Mr. EDISES. Would you likewise specify, as indicated in the Act, a particular purpose for which you want those particular minutes?

Mr. LIVINGSTON. The Act doesn't require us to so specify.

Mr. EDISES. It does.

Mr. LIVINGSTON. Read it again.

I will proceed with my argument.

Point 1: The November 8th minutes were admitted over objection——

Trial Examiner EICKHOFF. What?

Mr. LIVINGSTON. (Continuing.) The Minutes of November 8th were admitted on their proffer, over our objection. We are entitled to the minutes of the very next meeting, and I presume it will be stipulated that this is the very next meeting, will it not, counsel?

Mr. EDISES. Yes.

1722 Mr. LIVINGSTON. And if they can put in the minutes for one meeting, we are entitled, on cross examination on documentary evidence, to get the next page in the same book to see if there is anything on that page that affects the other page.

No. 2: If it subsequently develops—which is an outrageous suggestion—that any pressure would be brought to bear on these men because they attended the union meetings, it hardly lies in the mouth of the attorney for the Board to say that this Board is so supine and so without remedy that it cannot mete out proper punishment on us if we do anything to these men on account of their attending labor meetings. That is the basis of our whole proceeding. The Act prohibits us doing that, and the right of the Board to punish us if we do. So I suggest that such an argument falls of its own weight, namely, that we might punish somebody because they belong to a union. That is what the law says we cannot do.

Now, if the Examiner will rule that this is a proper request, I think I can get the document.

Trial Examiner EICKHOFF. I do not see that I have any such power.

Mr. LIVINGSTON. May we withdraw this witness temporarily?

Trial Examiner EICKHOFF. For what purpose?

Mr. LIVINGSTON. To put on another witness.

1723 Trial Examiner EICKHOFF. In connection with that?

Mr. LIVINGSTON. Yes.

Trial Examiner EICKHOFF. No.

Mr. LIVINGSTON. Does the Examiner rule we may not put on another witness in order to find out where the document is?

Trial Examiner EICKHOFF. Not at this time; no.

Mr. LIVINGSTON. Why not? I know you don't like to answer questions, so I will withdraw the question.

We want a paper. We do not want to postpone this case for days to find a paper which I think we can find in five minutes if given an opportunity to do so.

Trial Examiner EICKHOFF. I do not see that I have the power to issue a subpoena.

Mr. LIVINGSTON. I didn't say that. I asked for the right to withdraw this witness and put on another witness on the stand.

Trial Examiner EICKHOFF. For what purpose?

Mr. LIVINGSTON. I want to put a witness on the stand to find out, if I can, where this paper is, and I think I can.

I think that is a very reasonable request, and it will save your time and ours.

Trial Examiner EICKHOFF. I think, if you want the paper, you should get a subpoena from the Board.

Mr. LIVINGSTON. It may not be necessary. It may not be necessary to apply for a subpoena.

1724 Trial Examiner EICKHOFF. When we finish with this witness, if you want to know where the paper is, I may permit it.

Mr. LIVINGSTON. You would rather finish with this witness?

Trial Examiner EICKHOFF. Is there any purpose to be served by going into another matter in the middle of this examination?

Mr. LIVINGSTON. Simply to make sure that we get the paper without going to Washington for it.

Trial Examiner EICKHOFF. Very well, will you step down a moment, Captain Dodd?

(Witness Dodd temporarily excused.)

Mr. LIVINGSTON. Take the stand, Mr. Salisbury.

Mr. EDISES. I might state, Mr. Livingston, it is hardly necessary for you to go to Washington in order to get a subpoena, inasmuch as the Act provides that the power to issue them lies with the Regional Director.

Mr. LIVINGSTON. Where is he?

Mr. EDISES. There is an Acting Regional Director at this time.

Mr. LIVINGSTON. It says the Board has the power to issue them, Mr. Edises.

Mr. EDISES. Application can be made to the Regional Di-
1725-6 rector. You are surely familiar with the practice of issuing blank subpoenas, are you not? Haven't you ever applied to the Regional Director for a subpoena?

Mr. LIVINGSTON. No.

O. M. SALISBURY, called as a witness for the Respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Direct examination by Mr. LIVINGSTON:

Q. Have you the minutes of the meeting of December 6th of ARTA?

A. Yes; they are in existence.
Q. Where are they?
A. I gave them to Mr. Edises.
Mr. LIVINGSTON. We will ask counsel to produce the minutes.
Trial Examiner EICKHOFF. Any further questions of this witness?
Mr. LIVINGSTON. No.
(Witness excused.)
Mr. LIVINGSTON. We will ask counsel to produce the minutes.
Mr. EDISES. Mr. Salisbury states that he gave them to me with several other loose sheets of paper the other day. I will see if the minutes are among those papers which will presumably be at my office.
1727 Mr. LIVINGSTON. We will ask the matter go over until 2 o'clock for further hearing.
Trial Examiner EICKHOFF. Denied. You mean the matter of producing the minutes?
Mr. LIVINGSTON. Yes.
Trial Examiner EICKHOFF. That may go over; yes. Do you know whether or not you have them in court, Mr. Edises?
Mr. EDISES. I don't believe they are in court.
Mr. LIVINGSTON. Well, we will wait until 2 o'clock.
Mr. EDISES. I have certain papers that Mr. Salisbury has turned over to me from time to time, but they are not here. Conceivably they may be among those papers.
Trial Examiner EICKHOFF. Captain Dodd, will you take the stand again?
Mr. MERRICK. Just a moment, Mr. Examiner. In view of the fact that the Examiner was interested in the motive which prompted any one to come out here during the strike to take the place of those who went off duty, I have just discovered that there is in the audience here one of the men who came out under those circumstances, and I would like very much, if the Examiner permits, to put him on the stand and question him.
Trial Examiner EICKHOFF. Out of order?
Mr. MERRICK. Yes, since Captain Dodd is off the stand and the questions I have to ask him are all stereotyped.
1728 Trial Examiner EICKHOFF. Very well,
Mr. EDISES. Is it Mr. McDonough?
Mr. MERRICK. No, Mr. White.

R. W. WHITE, called as a witness for the Respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Direct examination by Mr. MERRICK:

Q. Are you employed at the H. B. office of Mackay Radio?
A. Yes.
Q. When did you first commence your work there?
A. I commenced work at the H. B. office on, I believe it was the 9th; I couldn't be positive.

Q. Of what month?

A. October.

Q. Prior to that time were you in the employ of the Mackay Radio Company?

A. I was; in Chicago.

Q. How long had you been in Chicago?

A. Since the previous May.

Q. Will you tell the circumstances under which you left the office to come to San Francisco?

A. Well, the strike was declared on Saturday at midnight, I believe. Anyway, up until Saturday I had heard nothing about it.

1729 Q. Just a minute. Are you sure it was Saturday or Friday?

A. I think it was Saturday midnight that it was declared.

Trial Examiner EICKHOFF. Would it help you to look at a calendar?

The WITNESS. No, sir; I don't think so. I think it was Saturday midnight, because I think, in discussing this, we agreed what poor tactics it was; that it would practically make no difference Saturday midnight. Any other day in the week would have been better. However, I don't think that is very material. It may have been Friday. I believe it was Saturday, though.

By Mr. MERRICK:

Q. Just go ahead with your story, and tell how you happened to leave Chicago.

A. I was talking to the chief operator in Chicago on the day that the strike was declared, and he told me that there was something of this kind coming up; that he just got word from New York. I told him if there was any question that there was to be a strike declared against the company, that I wanted to volunteer my services wherever they could be put to the best use, because the union didn't represent any one in Chicago with the exception of, I think, two men at the transmitters. In the operating room there were, I believe I can say positively, there were no members of the ARTA in the operating room at Chicago, and we were all very heartily out of sym-

1730 pathy with the union for the simple reason that none of us had any complaints with the treatment we had received, and we knew of no one who had complaints of the treatment that they received.

Mr. EDISES. I want to object to this witness being permitted to make a stump speech.

Mr. LIVINGSTON. You mean you are stumped by the speech.

Mr. EDISES. If there is anything that Mr. Merrick wants to bring out, why not ask it in the usual manner. This witness is going on regarding matters of opinion and prejudice, and things of that sort, which has no place in any such proceedings.

The WITNESS. I don't think I stated an opinion.

Trial Examiner EICKHOFF. Just confine yourself to what actually took place, and not what you think.

Mr. MERRICK. The motives that led this man to come here, and the background, are wholly material to this case.

Trial Examiner EICKHOFF. They might be.

Mr. MERRICK. That is just the kind of questions you yourself asked of Captain Dodd; that is, if he knew why the men left. He is testifying, telling that sort of thing. I object to any interference with the witness being allowed to answer the question in his own way.

Mr. EDISES. I object to his being permitted to make a peroration from the witness stand.

Trial Examiner EICKHOFF. Proceed.

1731 The WITNESS. As I was saying, we were all very heartily out of sympathy with the strike because we had all received just treatment and we knew of no one that had a complaint that hadn't been able to settle it through the ordinary method of going individually or in a group to the people responsible and having this thing straightened out.

We couldn't find anyone who knew what the ARTA called for until, I think, there was a copy of the agreement that was submitted in New York to Mr. Stone, and the part that stuck in the throats of—well, I can speak for myself and I know it was true of the others—the thing that stuck in my throat was the closed shop agreement. It seemed to me——

Mr. EDISES (Interrupting). I object to the witness characterizing these matters as being things that stuck in his throat.

The WITNESS. I am coming to the motives and——

Trial Examiner EICKHOFF. Just a moment!

Mr. EDISES. If the witness wants to tell a factual story, let him do it; but surely he is not supposed to make an oration from the witness stand.

Trial Examiner EICKHOFF. You may cross examine him later, Mr. Edises.

By Mr. MERRICK:

Q. Proceed, and ignore counsel's remarks.

Mr. EDISES. Thank you.

1732 A. I volunteered to come out here before there was any definite news that the strike had been called, because I was thoroughly out of sympathy with it. I could see no justification for the strike. I felt that my loyalty was to the company, and the union did not represent me, and did not represent anyone that I knew in the operating room in Chicago. I was merely one out of the whole operating staff in Chicago who wanted to come out here. Practically the whole office volunteered before there was ever any suggestion that two men would be sent out if they volunteered for the job.

The chief operator almost cried because he couldn't come out, and I think the whole office had the same attitude.

The union couldn't say that they represented Chicago. If they tried to put us out on strike they were——

Trial Examiner EICKHOFF. I think you are going a little too far in this matter.

By Mr. MERRICK:

Q. You say you volunteered and you notified the chief operator that you would be willing to serve?

A. Yes. I was with him practically that night, every minute.

Q. When was the first time that anything definite was said about anyone coming out here?

1733 A. I think that was the next morning.

Q. And what was said then?

A. He asked me if I still wanted to come out here and I told him, "Yes, very decidedly so."

Q. And what was said to you, whether you would be sent or not?

A. He said that there was a plane coming through that evening. I was to go ahead and do my day's work and be ready to leave that evening on the plane.

Q. Were any special inducements offered to you to come out?

A. No; there were none necessary.

Q. Any promise of preferment of any kind, or any increase in salary offered?

A. No promises,

Examination by Trial Examiner EICKHOFF:

Q. Did you make any conditions?

A. I made no condition whatsoever.

Q. Did you make any condition that you be allowed to remain out here?

A. No, sir.

Q. Was that stipulated between you and the company at any time?

A. No, sir; no stipulations whatsoever.

1734 Q. So far as your understanding was concerned, you could be transferred right back to Chicago after the strike?

A. Yes, sir.

Q. And how many men came from Chicago?

A. Two, sir.

Q. Who was the other one?

A. Senseman.

Q. At the time you are speaking of, at the time you volunteered, were you familiar with conditions in the San Francisco office?

A. No, sir. I had never been here. I did know they were, the San Francisco office was receiving more pay per grade than we were in Chicago.

Q. Did you know whether or not they had any grievances?

A. I never heard of any.

Q. Then your testimony is that you merely knew of nothing that would give them justification to strike?

A. I understood this was a company-wide strike, sir.

Mr. EDISES. What?

The WITNESS. A company-wide strike, not merely the San Francisco office.

By Trial Examiner EICKHOFF:

Q. Your office wasn't involved, was it?

A. There was a telegram sent, I think by Mr. Hathaway, to the ARTA men in the Chicago office.

1735 Q. Two men?

A. I think there were two at the transmitters—I am not sure—there may be more ARTA members in the transmitting and receiving station than those two. I know that they did receive word from Hathaway that the strike was called.

Q. Your protest was more against them affecting all offices than any question between the H. B. office and the company?

A. Yes.

Trial Examiner EICKHOFF. Any further questions?

Mr. MERRICK. No further questions.

Trial Examiner EICKHOFF. Any cross examination?

Cross examination by Mr. EDISES:

Q. Do you like the climate in California?

A. Well, it is a little cold the last few days.

Q. However, you prefer it to Chicago?

A. Very much.

Q. Did you know anything about the California climate before you decided to come out?

A. You have a very effective Chamber of Commerce.

Mr. LIVINGSTON. That is Los Angeles.

By Mr. EDISES:

Q. You were aware of the climatic advantages of California before you accepted the offer to come here, were you not?

A. Well, yes. I had been around—I never had gotten to the

1736 west coast in my travels and I really wanted to come out here very much.

Q. And, naturally, that had quite a little to do with your accepting the offer, is that right?

A. Oh, yes; quite a bit.

Q. What was your salary in Chicago?

A. My salary was $155.

Q. Now what are you getting?

A. $180 now.

Q. That is a $25 raise, isn't it?

A. Yes.

Q. And they told you what you would get in California before you came out?

A. Oh, no.

Q. You knew you were going to get a raise?

A. Oh, no.

Q. You testified you knew that the San Francisco men were getting more than the men in Chicago?

A. Yes.

Q. Well, you didn't think you were going to get a lower rate when you came out here?

A. I had no idea whether I would be on the San Francisco pay roll or not.

Q. You knew you were going to San Francisco?

A. Yes, I would have walked out in my bare feet.

Q. You would have walked out in your bare feet?

1737 A. Yes. It may interest you to know that I am still about $21 out of pocket.

Q. I am not interested in that. But your statement is that you would have walked out here in your bare feet, is that correct?

A. Yes.

Q. Strike or no strike, is that correct?

A. No; under strike conditions, because I was out of sympathy with it entirely.

Q. What did you know about the strike?

A. Well, it was a company-wide strike, as we understood it in Chicago. We had no complaints and we didn't know anyone that had any complaints; that is, I haven't heard anybody yet that told me any, and the men that I talked to stated they thought it was the most foolish thing that ever happened and no justification for it.

Q. Did you know what the demands were in connection with the strike?

A. Well, I don't know. All the people connected with it seemed to have a lot of misunderstanding about it.

Q. Did you know what the demands were?

A. I read what was supposed to be a mimeographed copy of the demands—the wage scale and the closed shop agreement.

Q. Were they asking for higher wages?

A. Yes, and some of them seemed quite ridiculous.

1738 Q. And were you opposed to asking for higher wages?

A. Under the present conditions I was. I was perfectly satisfied with what I was getting and I thought everybody else would consider themselves in just about the same shape.

Q. Didn't you feel that the Chicago men ought to be getting what the San Francisco men were?

A. Yes, but we were all willing to take it in the normal course of business and not through coercion.

Q. How would you have gone about getting a raise?

A. I had already gotten two raises previous to that, in a year, and I thought I was making good progress.

Q. What methods do you approve of in that connection?

A. Do your day's work and tend to your own business.

Q. You don't believe in coming right out boldly and asking the company for a raise, do you?

A. Yes, if there is justification for it.

Q. What constitutes an excuse, in your eyes?

A. If you are notoriously underpaid and the working conditions are notoriously bad.

Q. You don't feel that the mere fact that the company pays more for work in one section of the country than in another is any reason for the men in the other region asking for the same higher scale?

A. That condition prevailed in Chicago. We had confidence we would be fairly dealt with; we always had been.

1739 Q. Had you ever asked for a raise of pay equal to that of San Francisco?

A. No.

Q. Do you remember the proceeding in Chicago in which the company was brought before the NRA Board——

Mr. MERRICK. (Interrupting.) I don't think this is a proper cross examination, Mr. Examiner. I object to the question.

Mr. EDISES. It is strange to hear you say those words, Mr. Merrick.

Trial Examiner EICKHOFF. There was some evidence a complaint was filed.

Mr. MERRICK. What has that to do with this witness?

Mr. EDISES. Plenty to do with it.

Trial Examiner EICKHOFF. This witness has gone elaborately into his motives and I think that cross examination along those lines——

Mr. MERRICK. (Interrupting.) You mean whether or not a complaint was filed with NRA has something to do with his motives for coming out here?

Trial Examiner EICKHOFF. It might go to the sincerity of his testimony; yes.

By Mr. EDISES:

Q. Do you know about that NRA complaint?

A. No; I don't; I don't recollect that.

Q. Well, you know that prior to NRA, or rather during NRA, the men on the transmitters were working seven days a week,

1740 don't you?

A. Yes; I think they were.

Q. And you know that that was changed so they got one day a week off, don't you?

A. I am really not very familiar with the hours that the men at the transmitters and receivers worked. It is quite a complicated set-up. I remember it did change.

Q. As a matter of fact, you know very well, don't you, Mr. White, that that change came because the men complained to NRA?

A. I heard very little about that; I really don't know.

Q. You have a good memory in certain respects.

Mr. LIVINGSTON. Are you making a statement that that occurred? I don't care so much for that remark, and object to it.

By Mr. EDISES:

Q. Mr. White, was a Mr. Titus working for Mackay Radio in Chicago?

A. Mr. Titus?

Q. Yes.

A. Yes.

Q. What did he do there?

A. Operator.

Q. How long did he work for Mackay?

A. A year longer than I did. He went to work for Mackay just after the beginning of the service in Chicago; very
1741 shortly after that. I think he is about third senior in the office. Although I am not quite positive about it.

Q. How did you come out here?

A. I came out by plane.

Q. Were you in the same plane as McDonough?

A. Yes. There were nine of us.

Q. Did you talk about what you were going to do after you got here?

Trial Examiner EICKHOFF. I won't permit that. I think you have gone far enough on that.

By Mr. EDISES:

Q. You testified that everybody in the Chicago office wanted to come to San Francisco to act as strike breakers; is that correct?

A. I said practically everybody.

Q. About how many exceptions were there? How many didn't want to come?

A. Well, I don't know just how many. I know several people expressed the opinion to me that they wished they were in my shoes; that they would like to come instead.

Q. Where did you get the idea that everyone——

Mr. LIVINGSTON. (Interrupting.) He said practically everyone.

The WITNESS. I said practically everyone. Don't misconstrue my remarks.

By Mr. EDISES:

1742 Q. Did you go around and take a census of those that wanted to come?

A. No; it was hardly necessary. It is a small office and you would probably see everyone that works in the place in the day's shift.

Q. How many operators were in the office?

A. I would say about, I think, between eleven and fourteen; somewhere in that vicinity.

Q. And how many of them told you they wanted to come to San Francisco?

A. I couldn't say; almost all.

Q. Well, how did it happen that inasmuch as so many of them wanted to come, that you and this other man were selected?

A. Well, I don't know why that was. I think the reason that I was selected was that I put in my bid first before there was ever any official action taken.

Q. Were you always opposed to ARTA?

A. I was always opposed to what I have seen of it.

Q. You never joined the union?

A. Well, no; I never joined the union. I did put in my application when it first started. There was quite a bit of slick work done there and they did inveigle about ten of us into it. We quickly withdrew.

Q. Why did you——

Trial Examiner EICKHOFF. If we go on like this we are going to be here a long time.

1743 Mr. EDISES. I think I am about through.

Mr. LIVINGSTON. I imagine so.

Examination by Trial Examiner EICKHOFF:

Q. What was uppermost in your mind, bitterness against the union, or your desire to come to California?

A. It wasn't a bitterness against the union, but more loyalty to the company I worked for. I had no complaint. I didn't see any reason why I should go on strike. I would be as much of a scab if I had stayed on the job in Chicago and not offered to go where I could do the company the most good. I was working for the company; not for ARTA. They have been good to me, and to everybody that I know that worked for them, and I didn't see any reason why, when the strike was called, we should be called to go out on strike, or anybody else.

Q. You were anxious to break up the strike?

A. I was very anxious to, sir, and I would do the same thing over again. The men that represented them that we saw, and the tactics that we saw that were used, were not such as to convince us it was anything to affiliate ourselves with.

Q. And along with that was the pleasant prospect of coming to California and working here?

A. I must admit that was very enticing. I had heard a lot
1744 about California. I had been to about forty of the other states and I wanted to come to California and make it one more.

By Mr. EDISES:

Q. And likewise the higher wages?

A. No.

Q. You weren't interested in higher wages?

A. I had prospects of advancement if I stayed in Chicago.

By Trial Examiner EICKHOFF:

Q. What pay were you to work at when you arrived here?

A. As far as I know, the same pay I was drawing in Chicago. I didn't know whether I was on the pay roll of Chicago or San Francisco, or whether I would get paid.

Q. At what rate were you actually paid?

A. I was paid at the rate of $155 up until I transferred here. I don't just exactly remember what date that transfer formally took effect.

Q. Well, when you got your first pay check here, at what rate was it?

A. Let's see—I couldn't say that—yes, I can too; that was at my new grade. After I transferred I got my first pay check.

Q. And it was then at the rate of how much?

A. $180.00.

Q. $180.00?

A. Yes.

1745 Trial Examiner EICKHOFF. I am sorry I ever inquired into the motive. I think we have had enough testimony from this witness.

Mr. EDISES. Do you wish to ask anything on redirect, Mr. Merrick?

Redirect examination by Mr. MERRICK:

Q. Have you ever had any conversation with me, except about thirty seconds, before you came on the stand?

A. No, sir. I saw you once before in here.

Mr. MERRICK. That is all.

(Witness excused.)

Mr. MERRICK. Captain Dodd, will you resume the stand?

Mr. LIVINGSTON. I wonder if we may ask from the Board, in connection with this last witness, the same protection that they offered Mr. Henderson?

Trial Examiner EICKHOFF. What is that?

Mr. LIVINGSTON. When Mr. Henderson left the stand the Board represented to him that the Board would take care of him and——

Trial Examiner EICKHOFF. Just a minute! There is nothing of that kind occurred during my presence or while the hearing was in progress.

Mr. LIVINGSTON. That is right.

Trial Examiner EICKHOFF. I don't want any statement.

1746 Mr. LIVINGSTON. All right, I will ask if the Board will tell us if this gentleman will be given the same protection they offered other witnesses.

Trial Examiner EICKHOFF. I suggest the Board make no response to that.

Mr. LIVINGSTON. Well, I gather from the Examiner's attitude that the Examiner looks upon my suggestion as improper.

Trial Examiner EICKHOFF. I do.

Mr. LIVINGSTON. If so, I apologize to the Examiner personally, but may I say that after a little mature reflection I can not see the impropriety of it and would be glad to have it pointed out, because the Examiner knows my feeling in any courtroom whether here or some place else.

Trial Examiner EICKHOFF. After the hearing is adjourned, if you feel the cloak of protection should be requested from the Board, you may do so. It has nothing to do with the hearing.

Mr. LIVINGSTON. That is, the Examiner only feels the matter should be taken up off the record?

Trial Examiner EICKHOFF. Yes.

E. H. DODD resumed the stand and testified further, as follows:

Direct examination by Mr. MERRICK:

1747 Q. Captain Dodd, have you ever made any financial contribution for yourself, or your company, or authorized any financial contribution to any labor organization?

A. No.

Q. Have you ever personally, or for your company, given any other form of support, or authorized any other person to give such other financial contribution to any labor organization?

A. I have not—oh, I think I subscribed to Salisbury's return.

Q. You did?

A. Yes.

Q. Have you ever discriminated, or has any other officer of your company, to your knowledge, ever discriminated in regard to hire or tenure of employment, or any term or condition of employment, for the purpose of encouraging or discouraging membership in any labor organization?

A. I have not.

Q. To your knowledge has any——

A. (Interrupting.) Nor have I heard of anyone else doing it.

Q. Have you, or to your knowledge has any officer of your company, ever interfered with, restrained, or coerced, or attempted to interfere with, restrain, or coerce any employees of your company in connection with their right to self-organization, and to form, join, or assist labor organizations of their own choosing, or to engage in any

1748 concerted activities through representatives of their own choosing?

A. I have not, nor have I heard of any other officers doing so.

Mr. MERRICK. That is all.

Cross examination by Mr. EDISES:

Q. Captain Dodd, did you have anything to do with the selection of the eleven men who were to go on the list?

A. No.

Q. Did you take part in any discussion or conversation with Mr. Rodman and Mr. Jorgensen prior to the time the men returned to work, in which you discussed what men would not be taken back, in the event the strike was terminated?

A. No; no discussion in which names were mentioned as to men not being taken back; discussion as to the necessity of probably providing for eleven men, yes.

Q. When did that discussion take place?
A. Sunday, Sunday the 7th, I believe.
Q. Who was present?
A. Rodman and I were, and perhaps Jorgensen, but I don't remember whether Jorgensen was or not.
Q. That was on Snuday, October 6th?
A. The 6th, yes. I think I said the 7th. That was wrong.
Q. Was that in Mr. Rodman's office?
A. Yes.
1749 Q. Now, what was said about taking care of the eleven men?
A. I can't state, can't repeat the conversation, as it was so long ago, but I can give the high lights of it.
Q. Surely; that will be satisfactory.
A. It is understood I am not stating it word for word. Mr. Stone had told Mr. Rodman that the men coming from New York and Chicago, as well as any men who wished, that had come from Los Angeles desirous of remaining in San Francisco, were to be permitted to do so.
Q. Do you know when those instructions were received?
A. I think they were received that same day, but I am not certain.
Q. Go ahead with the conversation.
A. That meant that at least—the mention of the eleven didn't come in there. There wasn't a question of the eleven. It meant that anyone from Los Angeles that wanted to stay could stay, and anybody coming from New York or Chicago that wanted to stay could stay.
I think Rodman or Jorgensen stated that there was a possibility of two men from Los Angeles that wanted to stay, but the rest of them did not.
I think Mr. Rodman said that there were seven men coming from New York, and two from Chicago, according to information he had had from Mr. Stone.
Q. Those men had not yet arrived?
1750 A. No; they didn't arrive until the morning, the forenoon of the 8th.
Q. Seventh, you mean?
A. Eighth.
Q. Was it pretty definite that the Los Angeles men would stay here at that time?
A. You mean the two?
Q. Yes.
A. No; and it might have been more. There was nothing definite on that until I interrogated them. I think, individually, or had one of the Los Angeles men ask another one some time during the afternoon of the 8th, and then I found out that only one Los Angeles man wished to remain in San Francisco. His name was Cole.
Q. You ascertained that after the men had returned to work?
A. Yes.

Q. Will you go on with the discussion that took place in Mr. Rodman's office on Sunday, relative to the taking care of these men?

A. I think I left Mr. Rodman's office very shortly after that, in connection with lining up some circuits between Los Angeles and Portland, and I don't remember of anything else at that time.

If I didn't leave then, Mr. Warren, the division engineer, came up and the subject was discussed.

1751 Q. Well, wasn't anything said to the effect that, "Well, certain men won't be able to come back," or words to that effect?

A. I have no recollection of such a statement. I am of the impression, though, that I either thought it or heard it.

Q. The point is that this meeting was for the purpose of talking over the question of how you should take care of the men who were coming in, wasn't it?

A. No. It was a general meeting. There was no set meeting, no set conferences. There was some problems coming up every minute. You might go in to talk to Rodman to one thing, and talk to him about a half dozen.

Q. The subject was brought up in this meeting?

A. The subject was brought up. I will say one other thing: This offer of Stone's to send the men out had been made prior to that date. I think, if you want a thought, we had hopes, perhaps, of the men coming back to work, or with a portion of them coming back, and my thought was that if enough men did come back, with the men that we had from Los Angeles, the total and not the two—the total was seven—and the men who were at work, we could have carried on, and by overtime we could have handled the trans-Pacific circuits, and with no diminution in their previous

1752 efficiency.

Q. What is that?

A. With no diminution of their previous efficiency. We could have handled part of New York, and we probably could not have handled the coastwise.

Q. You knew that these eastern and Los Angeles men had to be taken care of, didn't you?

A. Yes.

Q. And that was known for some time prior to the men's returning to work, isn't that true?

A. Not very much prior. The men returned to work Tuesday morning and this thing happened Sunday some time; I think it was late Sunday.

Q. So that from the period on Sunday, when you first learned that the eastern men had to be taken care of, until Tuesday morning, you had knowledge, and Mr. Rodman and Mr. Jorgensen had knowledge, that these eastern and Los Angeles men would have to be taken care of?

A. Yes; if they cared to remain.

Q. Now, you discussed the question of who would have to be laid off, didn't you, in order to take care of those men?

A. No; I personally did not.

Q. Do you know whether that subject was discussed?

A. I heard it in the courtroom here, in the Board hearing,
1753 but I have no recollection of having heard it discussed prior to that time.

Q. You didn't take part in any discussion of that kind?

A. I have no recollection of taking part in any discussion of that kind.

Q. Were you consulted in regard to all of the decisions that had to be made in connection with the strike?

A. No.

Q. Was there a certain type of thing that ordinarily you were not consulted in regard to?

A. Oh, I was never consulted in regard to commercial matters. It wouldn't have been any use to do so.

Q. You were not present during the conference between Mr. Jorgensen and Mr. Rodman that was mentioned in court here yesterday?

A. You mean the one——

Q. (Interrupting.) The one in which they discussed the list of men?

A. The evening of the 7th?

Q. Monday afternoon or evening, I believe it was.

A. No; I wasn't there.

Q. Did you know there was going to be such a conference?

A. No. There was no knowledge as to conferences at any time.

Q. You didn't know they were going to discuss the list of men and talk over the question of who might have to be
1754 laid off, or anything of the sort?

A. No.

Q. Were you informed about that discussion afterwards?

A. No; I hadn't any knowledge of that conference or discussion until I heard it here.

Q. Now, do you have anything to do with the employment of the men at the H. B. office, or any other office?

A. No other office; men at the H. B. office directly, no, any more than a commanding officer would have direct charge over the particular functions of the head of a department under him.

Q. Does Mr. Jorgensen have to get your consent or O. K. before he hires or lays a man off?

A. No. If he wanted advice, of course, he could do it. If I came across something that I thought was not right I would tell him.

Q. Are you ordinarily consulted in regard to what might be termed labor problems in general?

A. No, except that I sat in on conferences sometimes.

Q. But your function with the company was in regard to matters other than labor problems, labor relations?

A. Well, if labor relations affected the handling of traffic in the H. B., or the handling of traffic between the H. B. and other offices, I would be concerned, because my particular job was the traffic handling.

1755 Q. Do you know whether the company welcomed the organization of ARTA in San Francisco?

A. I do not. I don't know of any objection that I ever heard to ARTA, as ARTA, or any union, or an expression of opinion.

Yes; I heard this: I heard that there was—I think Mr. Tuel told me that he believed in unions; that it was much easier to deal with a union, or a committee of men, than it was to deal separately with individuals, and I subscribed to that, too.

Q. Mr. Tuel died about September this year?

A. September 27—no; August 27th.

Q. Of this year?

A. Of this year.

Q. Do you know what Mr. Stone's attitude is in regard to ARTA?

A. No. Perhaps I might state that Mr. Tuel and I were very close friends. We had known each other for so many years that we might have discussed things personally that would not ordinarily be discussed with anyone else.

Q. You had never spoken to Mr. Stone, or heard him express himself one way or the other on the question of ARTA?

A. No. I never sat in any conference that Stone had out here, or ever heard him. I haven't seen much of Mr. Stone, as a matter of fact, since he joined Mackay Radio.

1756 Q. Did you ever hear Mr. Stone express an opinion in regard to Mr. Loudermilk, Bash, Rone, Palmer, or Salisbury?

A. No.

Q. One way or the other?

A. You mean Stone?

Q. Yes; Stone himself?

A. No.

Examination by Trial Examiner EICKHOFF:

Q. Has your opinion of ARTA changed during the strike?

A. You mean as a union or its functions—yes; my opinion of ARTA is this: I think that it was responsible for an ill-advised calling of the strike. In fact, I think it was stupid.

By Mr. EDISES:

Q. Captain Dodd, who, in your opinion——

Mr. MERRICK. (Interrupting.) Has he answered the examiner's question?

Mr. EDISES. I thought he had.

The WITNESS. Was that what you wanted?

Trial Examiner EICKHOFF. Had you finished your answer?

The WITNESS. Yes.

By Mr. EDISES:

Q. In your opinion, who are the persons or officials of ARTA who were responsible for calling what you term an ill-advised strike?

A. Well, you mean based on what I have heard here?

1757 Q. Based on your own knowledge.

A. Including what I have heard here——

Trial Examiner EICKHOFF. I don't think his opinion at the present time is material.

By Mr. EDISES:

Q. I prefer to have it at the time of the calling of the strike.

A. I don't know.

Q. You didn't know who was responsible?

A. I don't know. I knew the strike was called.

Q. Did you know who the leaders of ARTA were?

A. The only one I knew was Mr. Salisbury, who went back to New York. I knew Mr. Rathborne too.

Q. Did you know that Mr. Loudermilk was very active in the union?

A. I don't think Loudermilk was very active in the union after the trip he made east, because I saw a letter from some ARTA official stating that Mr. Loudermilk was not to represent them. That letter is in evidence here.

Trial Examiner EICKHOFF. Just a minute. We will recess until 2 o'clock.

(Thereupon, at 12 o'clock noon a recess was taken until 2:00 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

1758 E. H. DODD, the witness on the stand at the time of recess, resumed the stand and testified further, as follows:

By Mr. EDISES:

Q. As far as you know, Captain Dodd, were Mr. Loudermilk, Mr. Rone, Mr. Bash, and Mr. Palmer, in addition to Mr. Salisbury, the most active members of the ARTA?

A. I don't know. I do know that Mr. Bash was an acting chairman, I believe the title was, after Mr. Salisbury left for the east about September 1st; and that Mr. Palmer was on the Relations Committee—no; not the relations.

Q. Administrative or Relations Committee?

A. No—I think the Relations Committee will express it anyhow. It may not be the right name.

Q. Do you know whether Mr. Rone was on any committees?

Mr. MERRICK. You say, "Do you know"; what is it directed to?

Mr. EDISES. I want to find out if he knew.

Trial Examiner EICKHOFF. Is it denied that the company knew of the activities of these men in the union?

Mr. MERRICK. It appears, so far as Mr. Loudermilk is concerned, according to his own testimony, he had not been active since February 1935, and we received the official notification that he no longer had power to represent the union and was no longer a member in good standing.

1759 As far as Mr. Bash is concerned, I think they all knew that he was acting—I don't know whether they knew he was acting chairman, but they knew he was on the Relations Committee and Mr. Martinelli and the other man—I have forgotten who—and Mr. Rodman and Mr. Jorgensen knew that; they had been officially advised of it by the union.

Mr. EDISES. If Mr. Merrick is willing to stipulate that the company knew that Rone, Bash, Palmer, and Loudermilk, in addition to Mr. Salisbury, were the most active members of the union, that will be satisfactory.

Mr. MERRICK. We can not characterize them as the most active, particularly Mr. Loudermilk. We will stipulate that they were active and identified with the union.

Trial Examiner EICKHOFF. And the leadership of the local ARTA?

Mr. MERRICK. Yes. I won't stipulate that they were the only ones that the company knew were active, or that the company thought they were the most active.

By Mr. EDISES:

Q. Are you familiar with the qualifications of the operators in the H. B. operating room?

A. I am familiar with the required qualifications; not necessarily with the individual qualifications of the men.

Q. Do you know the individual abilites of the men that are the complainants in this action?

A. I am not an operator. My judgment of a man's operat-

1760 ing ability has to be based, in this case, primarily on what Mr. Jorgensen would report; secondarily, on what a supervisor would state; third, on my own observation, which would only extend to seeing him working a circuit and getting a picture of the way he handled himself.

Q. You testified, did you, that you relieved Mr. Jorgensen at various times and took his place as chief operator, or traffic manager?

A. I only took his place on this particular Tuesday, October 8th, with the assistance of Mr. Buckley, supervisor, to take care of the details.

Q. You have a pretty fair idea of these men's ability, haven't you, Captain Dodd?

A. I have an opinion.

Q. Based on your observation?

A. On my observation.

Q. I show you Board's Exhibit No. 16, entitled "Operators' office seniority, according to class and circuits," and I am going to ask your opinion in regard to certain of the names which appear on this list.

I ask you to scan the list of Class D operators.

A. (Examining Board's Exhibit No. 16.) The only one there whom I am——

Mr. MERRICK. (Interrupting.) Wait a minute. He hasn't asked a question.

1761 By Mr. EDISES:

Q. You have now scanned the list of names?

A. Yes.

Q. Are you acquainted with the merits or demerits of any of those men in the Class D list?

A. I can express an opinion about one.

Q. Which one is that?

A. Sayers.

Q. As a Class D operator, is it your opinion that Sayers is as good an operator as Rone, Palmer, Salisbury, Loudermilk, or Bash?

Mr. MERRICK. I object to the question.

Trial Examiner EICKHOFF. On what basis?

Mr. MERRICK. A variety—in the first place, it is utterly incompetent, irrelevant, and immaterial what this witness' opinion is of the operating ability of these people. He said he had nothing to do with the forming of the list in which these men were mentioned. He hasn't shown his opinion as to their ability has any bearing on any of the issues of the case.

I also object to it as improper cross examination, and that the direct examination did not open up any such line of testimony as this. The witness has also shown himself incompetent to answer the question by saying that he had very little knowledge as to their ability.

1762 Furthermore, he has asked him to compare the ability of a Class D operator with four or five men who are listed as Class A operators. The whole thing is ridiculous.

Trial Examiner EICKHOFF. I do not think it is proper cross examination. If you want the evidence just for the sake of the evidence, in other words, if you want this evidence as a part of your case, you should have brought it in when you were putting in your case.

Mr. EDISES. Mr. Merrick has brought out in his direct examination the question of Captain Dodd's opinion as to whether or not there was any discrimination of any kind. Now, I want to get his opinion as to the merits of these men and then ask him whether, in his opinion, he believes that the refusal to re-employ these men would constitute discrimination.

Trial Examiner EICKHOFF. I think that is a very circuitous way to go about it; and also that there would be so many elements to be

taken into consideration that it could hardly be brought out that way.

You might ask him, assuming that some men were dropped who had greater ability than the men who were re-employed, or retained, would he still say there was no discrimination. Ask him whether he has taken any such thing into consideration, the respective abilities of the men.

Mr. MERRICK. That would be an assumption of something contrary to the evidence here.

1763 Trial Examiner EICKHOFF. I mean he might ask the witness if, having contemplated the list, he still says there was no discrimination.

Mr. LIVINGSTON. That is all right.

Mr. MERRICK. It seems that is still mostly argument, from the evidence that is in the record—all right.

Trial Examiner EICKHOFF. I am merely now discussing generally, cross examination as opposed to direct examination.

Mr. EDISES. There was a great deal gone into on direct examination. Some of these questions framed by Mr. Merrick were extremely broad and covered practically everything.

Trial Examiner EICKHOFF. Some of those were broad questions; yes.

Mr. MERRICK. I hope they did.

Mr. EDISES. I am willing to put a more direct question to Captain Dodd, if it is agreeable to the Examiner.

Trial Examiner EICKHOFF. It is not. Captain Dodd says he doesn't know about the operating ability of the men, which is one of the elements taken into consideration.

By Mr. EDISES:

Q. Do you have an opinion based on your knowledge of the H. B. operating room, as to the qualifications of the five men who are the complainants in this case? Can you characterize them with

1764 reference to their ability and, in particular, with reference to their ability in comparison with that of other men of the H. B. operating room that you know of?

A. Such opinion would not only be based on what I would know, but on what Mr. Jorgensen reported to me.

Q. Well, can you offer an opinion, Captain Dodd, whether it be based on your own observation, or on the observation of Mr. Jorgensen? I am asking for your candid opinion as to the qualifications of these five men?

A. Yes; I can give my candid opinion, but I thought I had explained that I was not an operator and that the circumstances on which I would base such an opinion would determine its value.

Q. Let me ask you this before you proceed: Do you know of any matters other than these five men's ability as operators, on which you form an opinion as to their value to the company?

Mr. LIVINGSTON. Wait a minute. There are only four men—Read the question.

(The question referred to was read aloud by the reporter as above recorded.)

The WITNESS. You mean Mr. Phelps, too?

By Mr. EDISES:

Q. For the moment let's leave Mr. Phelps' name out of this question.

A. Because there were five men.

1765 Q. We will confine it to Rone, Bash, Loudermilk, and Palmer.

A. And you want to know my opinion as to their qualifications as operators?

Q. I am asking you now if you know of anything about those four men, other than their ability as operators, which enters into your estimate of their value to the company.

Mr. MERRICK. He hasn't shown he had any estimate of their value to the company. Ask him that question first.

Mr. EDISES. I presume he has.

By Mr. EDISES:

Q. You have your own opinion as to the value of those men to the company?

A. Why, yes. As a matter of fact, I recommended their applications for re-employment be given consideration as soon as a vacancy occurred. If I had not thought that they were qualified for employment with the company, I would not have put such an endorsement on their applications.

I can go still further: I think, in straight operating, based not only on what I observed, and not being an operator, on what Mr. Jorgensen reported to me, that Loudermilk, Palmer, and Rone are good men in receiving and transmitting, and that Bash is fair. I don't think he is as good as the other three.

The fifth man on the list—I think while I am speak-
1766 ing of the four I should speak of the fifth man, not on the list, but the fifth man not taken back, was a Class E operator. On two or three occasions prior to the strike Mr. Jorgensen had informed me that this boy was not good material. He had been a check clerk, I believe. He was given a chance to qualify as an operator. He didn't do very well and was sent back as a check boy, and then was given another chance.

Q. Who was this?

A. Hardin. He was a Class E, I think.

Q. I don't know whether I asked you this question or not: Did you ever hear Mr. Rodman express an opinion in regard to the desirability of re-employing any of the five complainants, prior to the time the men came back to work?

A. No.

Q. Did you ever hear Mr. Jorgensen express any such opinion?

Mr. LIVINGSTON. You mean prior to the time they came back to work?

Mr. EDISES. Prior to the time the men came back to work.

A. Their names may have been mentioned in that conference, or meeting, Sunday afternoon. I am not certain. I do not remember any other time when it could have been done.

By Mr. EDISES:

Q. Reverting for a moment—Would you state, Captain
1767 Dodd, that those four men, Loudermilk, Bash, Rone, and Palmer, were among, were four of the best operators, from the standpoint of their general value to the company, in the H. B. office?

Mr. MERRICK. Your question is rather conflicting—best operator from the standpoint of what?

Mr. EDISES. Change the word "operators" to "men."

Trial Examiner EICKHOFF. "Operators" is all right. They were classed as operators.

Mr. MERRICK. I would like to have the question read.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. MERRICK. "Operators from the standpoint of their value to the company,"—I do not know which he is emphasizing, whether he is attempting to emphasize technical ability or general desirability of employees. It sounds like a mixture.

By Mr. EDISES:

Q. Can you express an opinion as to the general desirability as employees, of those four men, Captain Dodd?

A. I would say, in my opinion, there is no objection to their being re-employed. If I had thought otherwise I wouldn't have endorsed their application for re-employment.

Q. Do you know anything of the circumstances surrounding the failure of the company to re-employ Mr. Phelps?

A. Only what Mr. Phelps testified to here; that he came
1768 in my office on this famous forenoon of the 8th and asked to see Mr. Rodman.

Again I must state that this is the high lights, and not a word for word conversation.

I inquired as to whether he had gotten in touch with Mr. Dewey. I believe he said he had not been able to contact him.

I told him it wasn't possible to see Mr. Rodman at that time. Mr. Rodman wasn't in. I think Phelps said he knew it. I told him I would try to arrange for him to see Mr. Rodman later on. That is the only thing definite I have in mind.

I think Mr. Phelps said something, that he wanted to see Mr. Rodman and talk about the stock exchange and other things. Naturally, having nothing to do with the stock exchange myself, it looked to me like that would belong to Mr. Dewey.

The next time I saw Mr. Phelps——

Q. (Interrupting.) Pardon me, Captain Dodd, but other than the activities testified to by Mr. Phelps himself, do you have anything to add to what he stated on the stand?

A. I don't remember all he stated on the stand.

Q. Were you present on the occasion when Mr. Phelps presented himself at Mr. Rodman's door and Mr. Rodman told him very emphatically to get out and stay out?

A. No. I would have gotten to that in a minute.

1769 Q. Were you present?

A. There was another—Let me tell this in my own way.

Q. Go ahead.

A. I think this was about 9 o'clock, when Phelps came in, and the question arose as to when he should come back. Either he suggested it, or perhaps I did, around one o'clock. I believe he came back at one o'clock and I told him that I hadn't talked to Mr. Rodman yet. I hadn't, about him. I had talked to Mr. Rodman over the telephone twice, very short conversations, and I didn't mention Phelps.

The next time Phelps came into my office, he opened the door to my office and Mr. Rodman was in the office at the time.

It is rather difficult to separate what I have heard here and my recollection of what actually happened.

If I had no further information I would state that Mr. Rodman waved his hand and told him he couldn't see him then, or words to that effect.

Q. Captain Dodd, do you know of any reason, other than the union leadership of these four men, why they should have been selected for places on this list of eleven?

A. I do not know the reason why the eleven men were selected on the list, except what Mr. Jorgensen gave as the details in his testimony. Prior to that I had no distinct reason as to why these men were selected.

1770 Q. Did Mr. Jorgensen at any time prior to the time that the men returned to work, tell you that these four men were, for one reason or another, unsatisfactory employees?

A. I don't remember.

Q. Did he ever speak unfavorably of Loudermilk?

A. I don't remember that. You are asking for a long period, and he might possibly have done so, but I don't remember.

Q. Do you remember him saying anything unfavorably about Bash?

A. No. Normally, Jorgensen wouldn't report operator details to me.

Q. However, you wouldn't say that—Let me phrase it this way: If these men had been notoriously unsatisfactory as operators, isn't it likely that Mr. Jorgensen would have told you something about it at some time?

Mr. LIVINGSTON. That is objected to as speculative.

A. I don't——

Mr. LIVINGSTON (interrupting). I said it is objected to as speculative as to what Mr. Jorgensen would have done.

Examination by Trial Examiner EICKHOFF:

Q. Was it the practice in your office that Mr. Jorgensen would report to you concerning any men who were very unsatisfactory?

A. Not necessarily, because Jorgensen himself handled all
1771 the disciplinary action, all the leave, all the payrolls, certain functional and direct action that belonged to the traffic manager. I was available, if Jorgensen needed to consult me, at any time.

Furthermore, if I had wanted to, I felt I had the right to talk to him about anything, but primarily my duty in regard to the H. B. office was traffic. Personnel was involved in that in a small way—not in a small way, but it was involved in the sense that if he had more operators than needed to handle the volume of traffic, and he hadn't reduced the force, I would have called it to his attention; if he didn't have enough operators and was working overtime, and needed more men, and it came to my notice, I would have called that to his attention.

Q. He could hire and fire without consulting you?

A. Oh, yes. He was captain of the ship as far as that is concerned.

By Mr. EDISES:

Q. You mentioned, I believe, Mr. Spanover.

A. I didn't hear the first of that.

Q. I believe you mentioned Mr. Spanover's name in your testimony on direct as having been in touch with the company in some way or other during the strike. Is that correct?

Mr. LIVINGSTON. That is utterly incorrect.

A. I didn't; no.

By Mr. EDISES:

1772 Q. I believe something was said about Mr. Spanover and——

Mr. LIVINGSTON. (Interrupting.) The question asked about Mr. Spanover, if I can be of assistance, to counsel, was whether or not he was a stool pigeon and a spy, and that sort of thing.

Mr. EDISES. Thank you very much.

By Mr. EDISES:

Q. Isn't it a fact, Captain Dodd, that Mr. Spanover circulated in and out between the company office and the picket lines during the strike?

A. I think he was in the H. B. operating room, to my knowledge, twice.

Q. And what was his purpose in coming up to the H. B. operating room?

A. I don't know. If I had I would have tried to put him to work if he had been willing.

Q. What?

A. I would have tried to put him to work providing he had been willing.

Q. Do you know anything about the circumstances under which the Los Angeles men were induced to come to San Francisco to work as strike breakers?

A. No. I think it was arranged by telephone conference between Mr. Rodman and Mr. Price, and as to whether Rodman asked Price to get them, or whether Price volunteered, I do not know.

1773 Q. Do you know whether or not the Los Angeles men were told that unless they consented to come to San Francisco and work as strike breakers that the Los Angeles office would be closed and that they would be out of their jobs?

A. I do not know about that, but I don't believe any such thing was told them, because if there had been any possibility of the Los Angeles office closing I think I would have checked it.

Q. However, you were not personally familiar with what took place down in Los Angeles in connection with their coming to San Francisco?

Mr. MERRICK. That is why you are asking the question, I take it.

A. I was familiar with the operation of the traffic station.

By Mr. EDISES:

Q. How many operators came from New York?

A. Seven.

Q. How many are still working in San Francisco?

A. One in the H. B. and one at the stock exchange.

Q. And the other five have returned to New York?

A. Yes.

Q. Were any of those operators, other than McDonough, given leaves prior to their returning to New York?

Mr. LIVINGSTON. You mean to see their father or mother, or just leave?

Mr. EDISES. I said "leaves."

1774 Mr. LIVINGSTON. I will object to it on the ground that the word "leaves" is unintelligible to me.

Mr. EDISES. Possibly it may be.

Trial Examiner EICKHOFF. The question is whether it is unintelligible to the witness.

Mr. LIVINGSTON. I merely asked counsel to define "leaves."

Trial Examiner EICKHOFF. You mean leave of absence?

Mr. EDISES. Yes.

Mr. MERRICK. There isn't any evidence that he was given a leave of absence.

Mr. EDISES. I believe there is.

Trial Examiner EICKHOFF. Was he? Let's not argue.

Mr. MERRICK. He was on vacation. He was given three or four days' vacation.

Trial Examiner EICKHOFF. That is leave.

By Mr. EDISES:

Q. Captain Dodd, do you recall having stated that Mr. McDonough was given several days' leave?

A. Yes; to see his parents before he went back to New York.

Q. Were any of the other New York operators given leave for any purpose before they returned to New York?

A. I don't know. I can find out. Mr. Jorgensen can probably answer that.

Q. Mr. McDonough was the only case that came to your attention?

Trial Examiner EICKHOFF. Mr. McDonough's case was the
1775 only one that is of any importance here, isn't it?

A. I don't remember any others.

Mr. EDISES. That was my reason for asking whether any of the others got leave, Mr. Examiner.

The WITNESS. Do you want me to find out?

Mr. EDISES. What?

The WITNESS. I can find out.

Mr. MERRICK. No, he doesn't want you to find out.

Mr. EDISES. If you want to establish it, it is perfectly all right with me.

Mr. LIVINGSTON. Is a crime committed by letting a man see his father or mother? Is there a federal law governing that?

Mr. EDISES. I would like for you to refrain from making gratuitous comments that go into the record, Mr. Livingston. I will promise to do the same thing.

Mr. LIVINGSTON. I would appreciate it if you would quit trying to scold or lecture me.

Trial Examiner EICKHOFF. Well, you know that this byplay doesn't add anything to the hearing.

Mr. LIVINGSTON. Not a bit.

By Mr. EDISES:

Q. Was Mr. McDonough's position, other than the fact that he didn't to operating, in any respects different from the position of the other strike breakers?

Mr. MERRICK. I object to it simply on the ground that
1776 Mr. Rodman is to be next on the stand and he is the only one who had supervision over Mr. McDonough, and Captain Dodd has testified he had nothing to with him. If the attorney for the Board really wants to find out this information he can best do it from the next witness.

Mr. EDISES. I am asking for what Captain Dodd knows.

Mr. MERRICK. He can not know very much about it. Unless you have some particular reason for trying to test his memory, or his credibility or——

Trial Examiner EICKHOFF. What is the question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. I will allow the question.

A. Well, I don't know what Mr. McDonough did, but——

Trial Examiner EICKHOFF. That is the answer, then.

By Mr. EDISES:

Q. Do you know, however, whether he was considered the leader of the strike breakers?

Mr. MERRICK. I object to that. It is immaterial what he was considered.

Trial Examiner EICKHOFF. Overruled.

A. I think that he took care of their material needs and comforts.

By Mr. EDISES:

Q. Sort of a straw boss?

A. Straw boss, you might express it, although I don't
1777 think he had anything to do with their work after they were immediately set to work.

Q. Do you know whether Mr. McDonough was sent to San Francisco for the purpose of doing solicitation work?

The WITNESS. Please read the question.

(The question referred to was read aloud by the reporter as above recorded.)

A. I do not know.

Mr. EDISES. No further questions.

Trial Examiner EICKHOFF. Have you any further questions, Mr. Merrick?

Redirect examination by Mr. MERRICK:

Q. Captain Dodd, was there any reason for——

Mr. EDISES. (Interrupting.) Might I interrupt you to ask one further question of the witness?

Mr. MERRICK. Surely.

By Mr. EDISES:

Q. Was Mr. McDonough docked for those days of leave that he was given?

A. I wouldn't have any knowledge of that.

Q. Can you identify this sheet of paper?

A. (Examining sheet of paper.) Yes.

Q. What is it?

A. Those were questions I asked Mr. Salisbury on Novem-
1778 ber 20, 1935, in my office. I phoned to him and asked him to come in and——

Mr. LIVINGSTON. (Interrupting.) Wait a minute! The answers is, those are questions directed to Mr. Salisbury.

By Mr. EDISES:

Q. Who directed you to ask this list of questions of Mr. Salisbury?

Mr. LIVINGSTON. That is objected to as incompetent, irrelevant, and immaterial, not proper cross examination, and remote and involving something not a part of this proceeding.

Mr. EDISES. There was a good deal of talk on direct examination in regard to the powers of Captain Dodd in regard to the employment of the men, just what he had to do with it. There were also questions directed toward bringing out the attitude toward unionism and ARTA in general.

I have here a document which I feel has somewhat of a bearing on both of those questions.

Mr. LIVINGSTON. You mean that document tends to impeach the witness?

Mr. EDISES. Not necessarily.

Mr. LIVINGSTON. It is not admissible if it does.

Mr. EDISES. I don't say that it does.

Mr. LIVINGSTON. I say if not, it is admissible.

1779 I haven't any objection to it if the Examiner wants to put in all the minutes showing everything that took place since the beginning of time up to the present, but what bearing has this on this case? Nine-tenths of what you have put in already has no bearing on it.

Examination by Trial Examiner EICKHOFF:

Q. How did you come to ask Mr. Salisbury these questions, Captain?

A. It came out from New York to Mr. Rodman and he gave me them to take care of.

Q. Do you know who that letter came from?

A. I think Stone sent it.

Q. The letter directed you to ask these question of Mr. Salisbury?

A. No; it suggested to Mr. Rodman that Mr. Salisbury be contacted and informed that the company would like to know his answers to the questions attached as well as any others that Mr. Rodman could think of, in deciding his case when he came back from leave for re-employment, but the case had not been pre-judged in advance, and so I did it. I got hold of Mr. Salisbury and——

Mr. EDISES. (Interrupting.) I might say——

Trial Examiner EICKHOFF. Complete your answer.

Mr. EDISES. I might add that Mr. Salisbury's name was on the list originally. We have been permitted, without objection, to ask questions in regard to the circumstances——

1780 Trial Examiner EICKHOFF. There is no objection right now that I know of.

Mr. LIVINGSTON. Yes, there is an objection pending.

Trial Examiner EICKHOFF. To the question I have asked?

Mr. LIVINGSTON. No; there has been an offer in evidence of a document.

Trial Examiner EICKHOFF. He didn't offer it.

Mr. EDISES. I haven't offered it.

Mr. LIVINGSTON. I take it back then, and will listen to the next question.

Trial Examiner EICKHOFF. Did you finish your answer?

The WITNESS. Yes.

Mr. EDISES. I wish at this time to offer in evidence this document headed, "San Francisco, November 20, 1935."

Mr. LIVINGSTON. I object to it on the ground that it is incompetent, irrelevant, and immaterial, not tending to prove any issue of the case, far remote from the direct examination and not proper cross examination.

Trial Examiner EICKHOFF. It may be admitted as Board's Exhibit No. 21.

(The document referred to was received in evidence and marked "Board's Exhibit No. 21, Witness Dodd.")

By Mr. EDISES:

Q. Was Mr. Salisbury re-employed by the company after his leave?

1781 Mr. MERRICK. I object to this testimony. We asked to have Mr. Salisbury join as a party to this proceeding, if he cared to do so, and he didn't do so, so why go into that question?

Trial Examiner EICKHOFF. There is nothing here charging failure to re-employ Mr. Salisbury.

Mr. EDISES. No, but in the first place, questions have been addressed to Captain Dodd in regard to re-employment of the various men who were on the list. Salisbury was on the list.

In the second place, Captain Dodd was asked on direct, questions in regard to the company's attitude toward ARTA and toward unionization.

Now, it happens that this document is directly connected with the re-employment of one of the persons who was on the list.

Mr. MERRICK. Failure to re-employ.

Mr. EDISES. Thank you. We have been permitted to ask questions without objection and, as a matter of fact, counsel for the respondent have themselves asked questions in regard to the re-employment of the men other than the five, who were on the list. I submit that, for those reasons it is perfectly proper at this time.

Trial Examiner EICKHOFF. The thing I am afraid of is launching into the case of Mr. Salisbury, unless it has some bearing here.

1782 Mr. EDISES. I think that I can promise my questions in that regard will be short.

Trail Examiner EICKHOFF. If he says "No" that is going to require an explanation of some sort, isn't it? Then we will have to go into the reason why Mr. Salisbury was or was not employed.

Mr. EDISES. I think that it can be handled——

Trial Examiner EICKHOFF. I will do this for the purpose of showing certain questions were put to Mr. Salisbury, as one of the men on the list, which were to be used in connection with considering his application for re-employment.

Mr. EDISES. I really only have two questions.

Trial Examiner EICKHOFF. That may bring forth a lot on the other side. That is the trouble with that.

Are you just arguing for the sake or arguing, or do you really feel it is necessary?

Mr. EDISES. I feel it is necessary to have this particular document in evidence.

Trial Examiner EICKHOFF. That is in.

Mr. EDISES. And likewise an explanation of the circumstances under which these questions were answered.

Trial Examiner EICKHOFF. We have that.

Mr. MERRICK. I can tell you that I prepared those questions myself and asked them to be put to Mr. Salisbury.

1783 Mr. EDISES. Were you present when Mr. Salisbury answered them?

Mr. MERRICK. No.

Mr. EDISES. Do you happen to know whether Mr. Salisbury's answers to the questions had anything to do with the fact that he was not re-employed?

Mr. MERRICK. I could answer that. If I thought it was material to the issue here, I would.

Mr. EDISES. May I be permitted to ask Captain Dodd——

Trial Examiner EICKHOFF. Was he re-employed?

Mr. EDISES. He was not.

Trial Examiner EICKHOFF. Is that the question?

Mr. EDISES. The question is whether or not Mr. Salisbury's replies to these questions had anything to do with his failure to be re-employed.

Mr. MERRICK. The fact is that Mr. Salisbury was absent on leave and when his leave expired, practically before his leave expired, he asked to be put back to work. When he first asked to be put back to work he was told he would have to wait until his leave had entirely expired and before that time he was asked to answer these questions—and he was also given another interview—and when his leave did expire he was told that his services could be dispensed with, and he was given two weeks' pay.

Trial Examiner EICKHOFF. Is that the testimony you wanted to bring out?

1784 Mr. EDISES. The question has still not been answered: whether Mr. Salisbury's replies to these questions had anything to do with his failure to be re-employed?

Trial Examiner EICKHOFF. Ask Captain Dodd if he can answer that.

By Mr. EDISES:

Q. Can you answer that question?

A. I can not.

Q. You can not answer?

A. No.

Mr. EDISES. Well, we will find out from other persons. That is all.

Mr. MERRICK. No; it isn't all.

Redirect examination by Mr. MERRICK:

Q. You said that in the conversations that you had with Mr. Rodman after Mr. Phelps had been in your office, you didn't mention Mr. Phelps' name to Mr. Rodman. You can offer any explanation why you didn't.

A. At the conversation I had with Mr. Phelps?

Q. Yes.

A. I forgot it.

Q. No other reason?

A. No other reason. Mr. Rodman phoned to me twice, rather short and terse, and I was principally concerned with hearing whether the New York and Chicago men had arrived.

Q. Where were Rodman and Dewey on Tuesday morning?

1785 A. First over in Oakland and later in San Francisco.

Q. What were they doing?

A. Receiving the men from New York.

Q. That had come by plane?

A. Yes; and from Chicago. I am not sure about Mr. Dewey. I know that Mr. Rodman was going to receive them.

Q. Who was Mr. Phelps' superior?

A. Mr. Dewey.

Q. Did Mr. Rodman have anything to do directly with the employment of Mr. Phelps, or anybody to take his place?

A. No; no more than he would as general superintendent.

Q. Mr. Dewey had the authority to employ and fire people at the F. X. office?

A. Yes; at the F. X. office. I would say the situation was analogous to Mr. Jorgensen in the H. B. office.

Q. That is, Mr. Jorgensen's situation was similar to Mr. Dewey's?

A. Yes; in that respect.

Q. Mention has been made of the days that Mr. McDonough took off when he was here. Do you know anything about the circumstances concerning those days when he was absent from duty?

A. No.

Q. You said that Mr. McDonough was the straw boss. You didn't explain what you meant by it. What did you mean

1786 by it?

A. Well, I would say he was acting as a petty officer, to use a naval phraseology; that when a draft of men are sent any place there must be some head to tell them where to take their train and where to get their meals, and corporal of the guard stuff.

Q. And that is the only way in which you know that Mr. McDonough was distinguished from the other fellow passengers on the plane?

A. I don't know that he was distinguished in that way. That is only my impression that he was the commissary department and the passenger department, we will say, during the trip.

Q. But after the men arrived here, did Mr. McDonough have any position of superiority over the other men?

A. No.

Examination by Trial Examiner EICKHOFF:

Q. Were you present on any occasion, at or about the time of the strike, when Mr. Rodman peremptorily ordered Mr. Phelps out of the office?

A. No; unless it could have been construed on this occasion when I saw him wave his hand when Mr. Phelps came in about half past two or three on the afternoon of the 8th.

Q. That is the only occasion?

A. Yes.

1787 Q. He said nothing to him at that time?

A. I don't know. I have no recollection of it. I just remember that when Phelps looked in I told Rodman that Phelps wanted to see him.

Trial Examiner EICKHOFF. That is all.

Mr. MERRICK. That is all.

Trial Examiner EICKHOFF. Is that all with this witness?

Mr. MERRICK. Yes.

(Witness excused.)

Mr. MERRICK. Call Mr. Rodman.

H. L. RODMAN, called as a witness for the respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Trial Examiner EICKHOFF. Would you like to take a recess before beginning the examination?

Mr. MERRICK. It might be more convenient.

Trial Examiner EICKHOFF. We will take a five minute recess.

(At this point a recess was taken, after which proceedings were resumed, as follows:)

1788 Trial Examiner EICKHOFF. The witness has been sworn. Let us proceed, gentlemen.

Direct examination by Mr. MERRICK:

Q. Because this subject was last discussed with the previous witness, Mr. Rodman, I shall start asking you about Mr. McDonough. Do you know the circumstances under which the men came from—or left New York to come out here to take the place of the men out on strike on Tuesday, October 8th?

A. I was informed by Mr. Stone that they had volunteered to come out.

Q. Did he tell you the way in which any selection had been made?

A. No selection had been made other than that the men had volunteered.

Q. Did he give you any special instructions about Mr. McDonough?

A. None, other than to say that he would be in general charge of the draft of men coming out. They were all operators.

"You can do as you please with them when they reach the Pacific Coast."

Q. What did you have done with Mr. McDonough after he arrived?

A. Nothing special, Mr. McDonough arrived in charge of the draft. After he arrived?

1789 Q. Yes.

A. I met Mr. McDonough, met them all. I took them to breakfast; brought them over to San Francisco. I don't think I saw Mr. McDonough again until—let's see. That was on the 8th.

I didn't see Mr. McDonough again, I don't think, until the following day. Then, I did have a reason. I asked Mr. Jorgensen on the following day to release Mr. McDonough to me for solicitation work.

Q. Had you known Mr. McDonough before?

A. Yes.

Q. In what connection had you known him?

A. Mr. McDonough was our first stock exchange branch manager in San Francisco.

Q. Was the stock exchange branch office closed during the strike?

A. Yes.

Q. What services did you ask Mr. McDonough to perform?

A. I wanted Mr. McDonough for solicitation purposes, to contact the customers, normally doing business through the stock exchange office. I knew that Mr. McDonongh had a wide acquaintance in that district.

I discussed it with him on Monday a bit, and I had a special reason for wanting Mr. McDonough to make the rounds of all
1790 our customers in that district, or connected with the stock exchange.

Q. What was the special reason?

A. The special reason was that I had been informed by Mr. Dewey that Mr. Phelps, the former manager, who was on strike, was out calling on the customers; and some of the customers had called Mr. Dewey and some of the reports weren't very pleasant. That is, they indicated that the company's difficulties were being advertised, and that it might result in the loss of considerable business to the company.

So, I devised a plan of having Mr. McDonough call on all of the customers, make the usual solicitation contacts—in fact, make them very specially, with a view to protecting the business.

Q. Did these reports that you received from Mr. Dewey indicate that Mr. Phelps was attempting to induce the customers to be patient with the company?

A. Be patient with the company?

Q. And give their business back to them as soon as the strike was over?

A. No; to the contrary. I had been informed by Mr. Dewey that Mr. Phelps had been to see Mr. Cook, of the Western Union, and an attempt would be made to wean as many of our customers away from us, and perhaps open a competing office in the stock exchange to be managed by Mr. Phelps.

Q. That is, an office of the Western Union?

A. Western Union.

Q. How long did you have Mr. McDonough doing those services?

1791 A. Oh, all together perhaps eight or ten days. I didn't figure it up exactly.

Q. Do you know whether it is customary for a man engaged in that type of work to more or less frequent the operating room?

A. Oh, yes. He would necessarily have to. It is customary for a commercial man, if he does his work thoroughly, to drop in once in a while and perhaps inquire as to how certain customers are filing—how things are going, or look over other tips—keeps in touch. It isn't—I would say, it isn't compulsory, but normally, it is the procedure.

Q. Is the time of a man assigned to that type of work more or less his own to do as he thinks best?

A. Oh, yes; oh, yes; during business hours I sent him out on a special mission in this case much the way we would send out any solicitor for special solicitation work. Perhaps I would see him at 9 or 9:30 in the morning, and I wouldn't see him any more until that night. He might call up—It was up to him.

After all, on that kind of work a man might have to wait in another man's office for 30 minutes in order to make the contact; or he may have to take the man to lunch. It is what we call a quality call—it is not just ringing door bells and running along.

1792 Q. Was there anything unusual about leaving Mr. McDonough on the H. B. pay roll?

A. No. Perhaps if I had given the matter a great deal of thought at the time, I might have instructed Jorgensen or Dewey, to make the transfer—or put it on Mr. Dewey's pay roll. But it is not unusual. From time to time, when we have special jobs to be done, we do make use of certain operators. That is if they have special qualifications.

For example, there is the case of Mr. Poy, which has been mentioned before. He is an American born Chinese, whom we used from time to time in soliciting in Chinatown. And there have been a few other instances—in fact, I wouldn't hesitate at any time to ask for an operator if there was good reason for it, and leave him on the operating payroll if it were only a temporary change. There is so much routine in connection with moving from one payroll to another it is just a waste of time to do it for a matter of a few days or sometimes a week or two.

Q. What else did Mr. McDonough do while he was here besides the solicitation work that you know of?

A. Well, it was on the morning of the 9th that I asked Mr. Jorgensen to let me have him. I kept him pretty busy. I do know that I didn't—I personally did not require any other work of Mr. McDonough other than doing a good job of soliciting in the financial district.

1793 Q. Did he do a good job; do you know?

A. He did a very good job. I know that he did a very good job.

It should be remembered at that time my chief concern was the protection of the business and the recovery of any business which we stood to lose. My position evidently has been proven, as we were doing an average of 209 messages a day just prior to the strike; and just recently, along after the strike, we were doing an average of 381 messages a day.

Q. That is, both those figures relate to daily volume at the stock exchange office?

A. Average daily number of messages at the stock exchange branch office; yes.

Q. Do you know whether Mr. McDonough took any vacation while he was here?

A. Yes; Mr. McDonough said he had a few days' vacation coming to him; wanted to know if he could take it here and visit his parents in Palo Alto.

I had frequent discussions with Mr. Stone on the long distance telephone, and in one of those discussions I mentioned this, checking up to find out if he still had a vacation coming. Mr. Stone gave me that approval. I think that was on a Friday.

Saturday morning is a bad morning to solicit in the
1794 financial district, so McDonough really had from Friday night, and Monday, Tuesday, and Wednesday.

Q. Those days used for that purpose were counted against him as regular vacation?

A. With the exception of Sunday.

Q. That is, Monday, Tuesday, Wednesday, Thursday?

A. Saturday, too.

Q. What?

A. Saturday.

Q. Saturday counted, too?

A. Saturday, Monday, Tuesday, Wednesday. He left, I believe, Wednesday evening, but Wednesday was included in his vacation.

Q. Those four days counted against the regular vacation period that he was allowed under the rules and regulations of the company?

A. Oh, yes.

Q. Was any special compensation of any kind paid to Mr. McDonough while he was here?

A. Special compensation?

Q. Yes.
A. Absolutely not.
Q. Do you know whether any was given in New York?
A. I know nothing about what happened in New York, but I assume such was not the case.
1795 Q. Never mentioned to you?
A. No.
Q. Did you ever request Mr. McDonough to do any other services to the company than those you have mentioned?
A. No.

Examination by Trial Examiner EICKHOFF:

Q. What is your title in the company, Mr. Rodman?
A. General superintendent.
Q. Of what area, or district?
A. California company.
Q. Of the entire company?
A. California company—that includes the Pacific coast and Hawaii and Philippines.

By Mr. MERRICK:

Q. What stations have you on the Pacific Coast other than the one in San Francisco?
A. Radio stations or offices?
Q. Yes.
A. You are speaking now of Pacific radio stations, or what?
Q. What business of the company is under your supervision?
A. The city's? What business of the company?
Q. Yes.
A. I am the general superintendent of the California company. It is all under my supervision.
Q. What places does that company do business at?
1796 A. What places?
Q. Yes.
A. Seattle, Tacoma, Portland, Oakland, San Francisco, Los Angeles, Long Beach, San Diego, Honolulu, and Manila. Those are our own separate offices. They do not—the list I have just mentioned does not include foreign offices that we work with.
Q. No. What other offices of the company, or persons having managerial functions, are there in San Francisco in addition to yourself?
A. Well, you speak of officers. The only officer we have on the Pacific Coast is Captain Dodd, as secretary of the company. The general superintendent is an officer by interpretation, by special direction of the Board of Directors, I might say.
I don't think that I understand the latter part of your question. We have a district manager in each district.
Q. Who is the district manager in San Francisco?

A. I should say we have district managers in each district, except San Francisco. San Francisco is not operated on the same basis. We have a city manager here, whom we call metropolitan manager—that is Mr. Dewey.

Q. In addition to yourself, Captain Dodd, Mr. Dewey, what other person, if any, in San Francisco?

A. We have Mr. Jorgensen as traffic manager; Mr. Warren,
1797 as division manager; Mr. Pate, as auditor——

Examination by Trial Examiner EICKHOFF:

Q. Who is the president of the company?

A. The president of the company is Admiral MacNamee. He is in New York.

Q. Vice-president?

A. Operating vice-president is Mr. Ellery Stone.

Q. Any other vice-presidents?

A. Yes; several vice-presidents—Mr. Chapman is in Shanghai; Mr. Rhame, in Shanghai. I don't believe any others of the California Company—Mr. Pratt, the chief engineer, is vice-president only of the Delaware company, I believe.

By Mr. MERRICK:

Q. Are there any other persons in San Francisco aside from yourself, Captain Dodd, Mr. Dewey, and Mr. Jorgensen, who have any managerial functions?

A. Mr. Russ, marine superintendent.

Q. That is all?

A. I think I have enumerated—yes; I have.

Examination by Trial Examiner EICKHOFF:

Q. Who is your immediate superior?

A. Mr. Stone, in New York.

Q. You are in almost daily touch with him?

A. Oh, yes; under normal conditions, by telegraph; under
1798 the unusual conditions, by telephone and telegraph.

Mr. EDISES. May I have the last question read?

(The question referred to was read aloud by the reporter as above recorded.)

By Mr. MERRICK:

Q. Do you remember having the conversation with Mr. Loudermilk and Mr. Palmer in your office on the evening of Tuesday, October 8th, at about 6:45 p. m.?

A. Tuesday, October the 8th—that is the evening—yes.

Q. When did you first know that Mr. Loudermilk and Mr. Palmer wanted to see you?

A. I recall that shortly after 5 o'clock I had—I would say around about 5:15, Miss O'Connor——

Q. Who is she?

A. My secretary and stenographer—came into the office and said that Mr. Loudermilk and Mr. Palmer had called for their checks and also wished to see me.

I was very busy at the time, and I distinctly remember what I said:

"I certainly can't see them now. Find out what they want and see if somebody else can't take care of them."

That was all there was to that. It was some time later then that I really saw them.

Q. Did she come back and say whether or not they were waiting?

A. They did not wait. Miss O'Connor did inform me they
1799 talked a few minutes and left the office. They did not wait.

Q. Did she get the checks?

A. I was informed that she secured their checks and had given them their checks.

Q. And they had gone?

A. Yes.

Q. Did you see them again later?

A. Yes. I was very busy that evening. I was ready to leave the office at about 6:45; had an appointment I wanted to keep; was quite tired. As the other man left the office, the door into Miss O'Connor's office opened and as the other man left Mr. Palmer and Mr. Loudermilk came in. I had not known that they had been waiting. I don't know now that they had been waiting.

I believe it was accidental that they saw me there. I had my hat on, was ready to leave.

Q. Do you remember the conversation that took place?

A. Well, I remember the high lights, at least, when they came in the door. The greetings were more or less cordial on both sides, and if I remember the remarks correctly, Mr. Loudermilk said, "How about going back to work?"

The substance of my reply to Mr. Loudermilk was that the best I could do would be to take his application and forward it to Mr. Stone for his consideration.

Q. Did you tell him whether or not there were any vacancies?

1800 A. Oh, yes; if you want me to relate all that I remember of that more or less informal discussion, I think I can.

I remember Mr. Loudermilk did most of the talking at first; and when he asked me "How about our jobs?" I believe I first said, "Well, there are no vacancies now; the best I can do—I can take your application and send it along to Mr. Stone."

I believe the next question from Mr. Loudermilk was:

"Well, there are some men in there working who are on the list. How about that?"

I said, "You must remember, those men came down to work at about six o'clock this morning, along with the rest of the group, along with about 36 men."

Then the conversation took a sort of a personal turn. What I most distinctly remember is Mr. Loudermilk saying:

"Well, now, Mr. Rodman, what we are here for is we want to get a personal expression from you—we don't want to pin you down to any official expression, but what is your personal opinion of our chances of being reinstated? What is your personal opinion of Mr. Stone approving our applications?"

I said, "Well, you have asked for my personal opinion. If it were left entirely to me, I don't think they would be very good."

1801 There was quite a little personal discussion—personal conversation. I really don't recall all of it. but another high light in their conversation was, Mr. —. I remember Mr. Palmer doing very little talking for a while. and then, for some reason or other, he seemed to be more interested in helping Mr. Loudermilk secure his position than his own.

Mr. Loudermilk said in one point:

"I understand the reason I have been singled out is that I am a sort of ring leader." He said, "You know yourself, I haven't been very active in this union, haven't been active—haven't been agitating any trouble. You have a letter from the union telling you that I had no authority to do anything."

I agreed with him that I had such a letter; but I said, "The final decision of these last—the final decision on your application, and some others, is going to be made by Mr. Stone; and you must remember you have a national reputation. You are known in New York and in Chicago also as being a very active—or something of an agitator."

I may have put it a little stronger than that. I remember I told Mr. Loudermilk that in my opinion many of the company's troubles had been stirred up by him. But I made it very clear to Mr. Loudermilk that he wasn't being fired: I wasn't firing him, and he wasn't being discharged for good; that he could put in an application, and

1802 I knew Mr. Stone agreed with me on that. Those were his instructions, in fact.

They could put in an application and I promised—then, I remember that Mr. Loudermilk, he said, "If I put in my application, will you approve it favorably?"

I said "I won't promise just what I will do until I get it. There are two other people, Mr. Jorgensen and Captain Dodd, who will have to pass on your application before I get it, but I will promise that as soon as I get it I will forward it to Mr. Stone promptly."

Q. What did you do with the applications of Mr. Loudermilk and Mr. Palmer when they were received?

A. I sent them to Mr. Stone by air mail but I first endorsed them. I recommended—let's see! I made the statement to Mr. Stone that there were no vacancies existing at that time, but a further statement to the effect that I recommended that they be re-employed when vacancies occurred—words to that effect.

It should be remembered in this connection that Mr. Stone controls the personnel throughout the Mackay system. He probably had in mind Chicago, New York, and all other points, in passing upon those applications.

Q. Do you remember any discussion at this meeting about the subject of communism?

A. Yes, I do, since you remind me of it.

1803 Mr. Loudermilk or Mr. Palmer—I think it was Mr. Loudermilk—said "I understand I am accused of being a communist. Mr. Rodman, do you really believe that? Do you think I am a communist?"

I think Mr. Palmer came in then and said, "Do you think I am a communist?"

I said "No, I haven't accused either one of you of being communists; I don't know that you are; I don't believe you are, but I do know, or I have reason to believe, that you are associated with an organization which in turn is affiliated with other organizations of a communistic nature, or controlled by this—by communists."

It just happened—I believe it was—well, just recently I received a report from our Portland office——

Q. Just a minute! I show you the Board's Exhibit No. 5 for identification. Is that what you had at the time?

A. Yes. This is the report I referred to.

Q. Did you read to Mr. Loudermilk anything that appeared on that report?

A. Yes; I did. I did that to show Mr. Loudermilk and Mr. Palmer that I was not expressing purely an opinion of my own, that I was acting on advice or reports that had come to me through what I had considered reliable sources.

Q. What part of that do you remember reading to Mr. Loudermilk?

1804 A. In order to back up the remark I had just made to Mr. Palmer and Mr. Loudermilk, I distinctly called his attention to the statement that Mr. Pyle "Vice-president of the union, is a member of the communist party and is also a very close friend of Harry Bridges."

I also read another paragraph which meant a great deal to me. Well, as a matter of fact, I read, I think, most of this report, but some of it meant more to me than other parts.

For example, "The ARTA is the most radical of any of the maritime unions and the communist leaders of the Maritime Federation will use the present strike to call out all radio operators on ships to cause a maritime strike."

This was the significant part to me. I wanted them to understand that. "This is part of a plan of the leaders to divert attention from the longshoremen and put the cause of the strike up on the ARTA."

It wound up by giving the name of the man in San Francisco: "Rasmussen in San Francisco is the guiding hand of the present

My purpose in reading that to our operators was to back up statements that I had made just previously, just at the time of our conversation, the fact that I didn't believe they were communists
1805 but they were lined up with an outfit that was almost admittedly associated with a communist-controlled organization.

Mr. MERRICK. I would like to offer that in evidence.

Mr. EDISES. No objection.

Trial Examiner EICKHOFF. It may be admitted as respondent's Exhibit No. 13.

(The document referred to was received in evidence and marked "Respondent's Exhibit No. 13, Witness Rodman.")

Trial Examiner EICKHOFF. Mr. Rodman, I don't want to make it difficult for you to testify, but the more you omit what you thought, or what was going through your mind, or the purpose, and so forth and so on—why the sooner we will be through.

The WITNESS. Yes; I'll do my best.

Trial Examiner EICKHOFF. The less cross examination there will be also.

By Mr. MERRICK:

Q. Do you remember telling Mr. Loudermilk that you had received instructions from New York that he was not to be re-employed under any circumstances?

A. No.

Q. Can you say whether you did or did not tell him positively?

A. I didn't tell him that.

Q. You are sure of that?

1806 A. Sure.

Q. Did you tell Mr. Loudermilk that, in your mind, he was the ring leader of the strike, and public enemy No. 1?

A. No; as I recall it, Mr. Loudermilk at one point in the conversation said, "Well, I guess I am public enemy No. 1."

I am quite sure I didn't accuse him of being public enemy No. 1.

Q. Did you indicate to Mr. Loudermilk that it would be futile for him to apply for re-employment?

A. No; I did not. The conversation with Mr. Loudermilk and Mr. Palmer lasted, I should say, from about 6:45 to around 7:30, and while I don't remember everything that was said, much of it—some of it was joking—the last thing I said was, that if he would file an application for re-employment that I would promise to forward it on promptly to New York to Mr. Stone, as soon as it reached me.

Q. Do you remember Mr. Palmer's, or your conversation with Mr. Palmer, telling him that he belonged to the wrong party?

A. I don't recall that, but I do recall a little bit of conversation where I said, "Well, it looks like you bet on the wrong horse."

Q. Did you tell him that he was being discriminated against because he was the ring leader of the strike?

A. Being discriminated against?

Q. Yes.

1807 A. I didn't tell him that. I don't recall that being discussed, that he was being discriminated against.

It must be remembered that the chief reason for him calling there was to find out about going back to work, and what I, personally, thought of his chances of being reinstated.

Q. What was the upshot of this meeting with these two men? What did they do?

A. They left the office, but, of course, I didn't know it at the time—but subsequently I learned that they went on in to Captain Dodd's office. Maybe it was Mr. Jorgensen's office. They left my office and, I believe, went directly to file applications—or a little later than that, they went on in to file applications for re-employment.

Q. Did they say, when they left your office, whether or not they were going to do that?

A. I don't recall.

Q. Did you know at the time that they came into your office—you say it was around 6:45—that there were no vacancies?

A. I knew that no vacancies existed in H. B. at that time.

Q. Who told you that?

A. Captain Dodd.

Q. About what time did he tell you that?

A. Not very long before that—around about six o'clock.

Q. Did you have any conversation with Mr. Stone?

A. Yes.

1808 Q. After that report from Captain Dodd, or before seeing Mr. Loudermilk and Mr. Palmer?

A. Practically immediately after talking with Captain Dodd. I think he went down to get something to eat. I didn't see him any more that night, I don't think. I was in conversation with Mr. Stone around about—I should judge probably about 6:15 that evening, if I remember correctly. I called Mr. Stone on the telephone, partly for the purpose of giving him a report on H. B. I told him that we were full up. All jobs were full at that time.

Q. Did you discuss the applications of the men who had applied and were on the list of eleven, to Mr. Stone?

A. Yes; I did. At that time I informed Mr. Stone that these men had been taken back; that Mr. Jorgensen had taken them back; and that there were no very serious objections, that I could see, to any of them. They were, generally speaking, good operators, and I thought that he ought to confirm what I had done; and he gave me that confirmation.

Q. That is, he confirmed them permanent positions?

A. Yes; that they were approved on a permanent basis. They were re-employed on a permanent basis. I pointed out to Mr. Stone at that time that all of the men had not returned, and I do remember Mr. Stone telling me specifically that, of those who had not returned, to forward the applications on to him. Take the

1809 applications and forward them to him.

I had a little pencil note in front of me and I ran over the names of the men who had not returned. It just so happened that Loudermilk, Rone, Bash, and Palmer, I think, were the only men who had not applied at that time.

Q. That is, you are talking about the H. B. office?

A. I am talking about the H. B. office only. I might mention—I should mention, in addition, most of the details of the H. B. office were being left to Captain Dodd and Jorgensen. Personally I was very busy with out-of-town matters—Portland, Seattle stations, and Lobitos and Palo Alto. That is one reason I didn't remember every little thing that happened in respect to H. B.

Q. Do you remember going to the stock exchange office Monday afternoon, October 7?

A. Yes; very distinctly.

Q. How did you happen to go there?

A. I was passing the stock exchange on my way to lunch. I think it was around about 2 o'clock. I really hadn't given it a thought till I got in front of the building. It occurred to me "Here is one of our offices. The man in charge is on strike. It is unprotected."

We had employed no guards to protect that property. I thought I would drop in to see what the situation was—just to see if
1810 everything was all right. I didn't expect to find anyone there.

When I went in the door I was somewhat surprised to see Mr. Phelps sitting at the desk with his hand on the telephone. Mr. Lee, an operator, was standing nearby.

When I saw Mr. Phelps with his hand on the telephone, it disturbed me a bit because that telephone connects with our P. B. X. board. Frankly, I had reason to believe—I know Mr. Phelps is a pretty smart man and I had reason to believe that there might have been some way he could listen to the conversation with Mr. Stone and myself, or between me and any manager.

I was having lots of them at the time, and it annoyed me.

I could go on and give other reasons basing my suspicions, but the upshot of it was that I ordered Mr. Phelps out of the office and Mr. Lee. I felt I had a right to, since I was in charge of the property. Mr. Phelps was on strike. The properties had to be protected. How did I know he wouldn't sabotage the equipment at the right time? There was no place for him; he was on strike; he had no business there.

To save some money I gave instructions to the guard employed by the stock exchange not to let Mr. Phelps, or Mr. Lee, or anyone else, or any unauthorized person on that property of ours until I gave further instructions.

1811 I was overstepping my authority to give these instructions to the stock exchange guard, but I felt the stock exchange management would back me up if necessary.

Q. Did you use rather violent language, Mr. Phelps?

A. I wouldn't say it was very violent. I'll admit I was annoyed and——

Q. (Interrupting.) Do you recall what you did say to him?

A. Frankly, I don't recall exactly what I did say. It may have been bordering on violent language, as you say, but I don't recall exactly. I admit that I was annoyed and I didn't want any misunderstanding about what I meant. I wanted him to get off the property.

Q. Did he answer?

A. Phelps didn't say a word, as I recall it. He just went off the property. He disappeared in the stock exchange building.

Q. Did Mr. Lee answer you?

A. Mr. Lee followed me out into the street. He apologized for being there. He said he knew it was the wrong thing.

He told me at the time, he said, "I am out of sympathy with this whole business. One other thing I want to apologize for, too, is the interception of Miss MacKenna last night. I want you to know I had nothing to do with that. I just happened to be along with the men who interfered with her getting back to the office. I want
1812 you to understand I had nothing to do with that. That is beneath my principles."

Q. Is he a former H. B. employee?

A. H. B. and stock exchange operator.

Q. Was he on strike at that time?

A. Mr. Lee at that moment—it is not clear to me; I am not certain whether he was on our pay roll in H. B. I believe he had been working a half a day at the stock exchange, but that was under the direct control of Mr. Dewey at the time. He had Mr. Lee there part of the time, a part of the day—a half a day at the stock exchange. I really can't answer that question completely.

Q. Had you any reason to suspect Mr. Phelps' loyalty to the company prior to the strike?

A. Well, that is a strong question, but since it is asked, I will say "Yes"; and due to Mr. Dewey having informed me that, I sometimes suspected Mr. Phelps of being a leak, as he called it, to Western Union, because his wife was employed in the Western Union. Naturally, Mr. Dewey being a city manager, I didn't question the inference of his statement, and I rather probably had the same—well, I did have the same—because of that report, I did have the same suspicion. In other words, I respected Dewey's position in the matter. Well, you are only talking about loyalty now?

Q. Do you know whether any time an official of the stock
1813 exchange asked to have Mr. Phelps discharged?

A. Yes. A floor manager of the stock exchange at one time called Mr. Dewey on the telephone. This time, I think, was maybe about three months before the strike, I don't remember exactly. I think it was in the summer time, I think maybe June or July—I wouldn't fix the date exactly because it was handled by Mr. Dewey.

But Mr. Dewey informed me he had a demand from a floor manager to discharge Mr. Phelps or remove him from the stock exchange immediately.

Q. Was any action taken looking to the compliance with that request?

A. Yes. First Mr. Dewey went to the stock exchange, discussed it with the floor manager, came back, came into my office, and presented me with what we call a "service exchange report."

He had his signature on it; told me the story, and asked me to sign it; assured me that he had talked it over with the floor stock exchange manager—the stock exchange floor manager—and pointed out the seriousness of the charges, and had that manager's statement he would not change his position in any way. Dewey asked me to sign it.

Q. Did you sign it?

A. No; I did not; but I was about to sign it. I was right on the point of signing it when a girl from Mr. Dewey's office called me, and said there was a phone call for him.

1814 Mr. Dewey answered—that is, went into his office and took the call. He said the president of the exchange called him on the phone, and rescinded that order.

Q. That was——

The WITNESS (interrupting). He first asked Dewey to come right over and see him. He did go over to see him; got all the details. They wound up the same way, however, he had rescinded the order.

Examination by Trial Examiner EICKHOFF:

Q. When was this incident?

A. To the best of my recollection, June or July 1935.

Q. This year?

A. Yes.

By Mr. MERRICK:

Q. Without going into details at all, Mr. Rodman, have you received a report also of unsatisfactory nature of Mr. Phelps' services prior to his coming to the company—Mackay Radio?

A. Well, yes.

Q. I won't——

A. (Interrupting.) I have a report to that effect.

Mr. EDISES. I suggest the witness be permitted to go into it.

Mr. MERRICK. I would rather not unless you insist upon it. There are serious charges involved.

Mr. EDISES. They hired him, didn't they?

1815 Mr. MERRICK. No.

Examination by Trial Examiner EICKHOFF:

Q. Do you take the position that you discharged any of these men for cause, whether you discharged them at all?

A. The men named in the complaint—that is Bash, Loudermilk, Palmer, and Rone—no.

Q. Or that you refused to re-employ them for cause?
A. No.

By Mr. MERRICK:

Q. I may have—What is the reason that you didn't re-employ these men?
A. These four men?
Q. Yes.
A. There is only one reason these four men were not employed: they applied after all vacancies had been filled in the H. B. operating room. Had they come back to work in—with the 35 or 36 men that started back at six o'clock in the morning, on the 8th, they would have been put to work under the same conditions that the other men on that same list were put to work.
Q. Or if they had come back prior to 4 p. m., would the result have been the same?
A. As long as vacancies had existed.
Q. Do you remember having any conversation with Mr. Phelps in which you told him that the reason why he was not re-
1816 employed was because he was a member of the union, and that you were going to break the union if it took the last penny the company had; and that you had employed men with rifles to clear cable landings around the transmission stations?
A. No; the statement is ridiculous if it is attributed to me.
Q. I am not sure that it was. He may have said that Mr. Dewey told him that. You never told him anything like that?
A. No.
Q. Has Mr. Dewey jurisdiction over any office outside of the San Francisco offices?
A. Stock exchange?
Q. Has he any jurisdiction over the transmitting and receiving stations?
A. No; none whatever.
Q. Did you have a conversation with Mr. Phelps on or about Tuesday, October 15?
A. October 15?
Q. Yes.
A. Week of the strike—yes, I sent for Mr. Phelps.
Q. Why did you send for Mr. Phelps?
A. Well, frankly, because he sent me a letter in which he said that if he didn't get his job back he was going to jump in the bay—or words to that effect.
1817 I, having the company's best interests in mind, thought it best to send or Mr. Phelps and explain to him in my own way—or try to—that there were no personalities or no personal reasons why he had not been re-employed. I might say that was partly the result of Mr. Dewey's reports that Mr. Phelps had generated, or had someway—he looked at it that way—at least that there had been personal reasons, either between me and Mr. Dewey, or someone else.

Mr. Dewey hadn't been in very good health—high strung, and most of the information Mr. Phelps had received had been through Mr. Dewey; but I determined to take an hour and 2 hours if necessary, to state the position of the company to Mr. Phelps in my own way: namely, that his application reached me showing that he applied for re-employment, I think it was 3:30 p. m. on the 8th. And that Mr. Dewey had reported that he had assigned Mr. Duggan to that job on about noon—at 12 o'clock—on the 8th.

Q. Assigned him on a permanent basis?

A. Mr. Duggan?

Q. Yes.

A. Yes; Mr. Duggan came to the Pacific Coast. It was my understanding that he could stay here in San Francisco if he so desired.

Q. He accepted that on a permanent basis?

A. It was my understanding from Mr. Dewey that he had selected Mr. Duggan from the drafted men from New York as
1818 being best fitted for the exchange—for the stock exchange. He had been offered the position, and he had accepted it. It wasn't an employment; it was an assignment. He was already in the employ of the company.

Q. Do you know what special qualifications Mr. Duggan had?

A. It was reported that he had had some previous experience in this line of work. He was a good operator. He has a very good personality.

Q. Do you know if he is a college graduate or not?

A. Yes; I wouldn't say that—I know that he had attended Stan—University of California. I do not know whether he graduated or not. I understand he graduated from the University of California.

Q. What else took place at this conference that you had with Mr. Phelps? Do you remember any other conversation?

A. Well, no. Since I have already mentioned the letter that I received from Mr. Phelps, fearing that he might be in ill health, or at least I wanted to find out why he was putting up such a terrific battle for what appeared to be a small telegraph job, and why he should want to jump in the bay. I feared that maybe something was bothering him; that he might actually be in ill health.

Frankly, I wanted to forestall any real action along those lines. I certainly wouldn't want Mr. Phelps or anyone else to do a
1819 thing like that and leave a statement that might incriminate the company, whether right or wrong. It would be bad publicity.

Also, I certainly wouldn't want to see any operator do a rash thing like that if I could prevent it.

Q. Do you remember any discussion about Mr. Duggan with Mr. Phelps?

A. Oh, yes. Well, during the conversation Mr. Phelps volunteered the information that Mr. Duggan was slated for violence, and he was pretty close to the top of the list; and he begged Mr. Dewey

and himself if that took place to please call him on the telephone immediately to know where he was. He wanted to be clear of anything like that. He was not in sympathy, but he knew it was planned, as he had heard it down at the ARTA headquarters.

Q. Do you happen to know anything about the file of Dean Witter & Company?

A. Well, it has been reported to me—yes. Mr. Dewey and Mr. Hodges, who was a commercial assistant of mine, did report to me that shortly after the strike Dean Witter stopped filing messages for about one day; and either Mr. Dewey or Mr. Hodges, or both of them, jointly, went over to see the customer and straighten it out. They promptly resumed filing.

Q. Insofar as you know, have they filed since that time as many messages as they normally do?

1820 A. I am quite sure they have; otherwise Mr. Hodges would have reported it to me.

Colloquy

Trial Examiner EICKHOFF. How much more direct have you, Mr. Merrick?

Mr. MERRICK. I should like—I should think it would be about five minutes.

Trial Examiner EICKHOFF. Well, I think we had better go over until morning, then.

Mr. MERRICK. I wish the record to show that counsel very kindly supplied us with the minutes of December 6th, and I am returning them to him now that I have had an opportunity to review them.

Trial Examiner EICKHOFF. Ten o'clock.

(Thereupon, at 4:00 o'clock p. m., the hearing in the above-entitled cause was adjourned until 10:00 o'clock a. m., Thursday, December 19, 1935.)

1821 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Thursday, December 19, 1935.

Met pursuant to adjournment at 10:05 o'clock a. m.

PROCEEDINGS

Trial Examiner EICKHOFF. Are you gentlemen both ready?

Mr. MERRICK. I am ready.

Mr. EDISES. Before proceeding with your examination, may I ask that the record show that the minutes of the 24th meeting of ARTA, which were requested by Mr. Livingston, were produced and submitted to him and——

Mr. MERRICK. I think you made such a statement before.

Trial Examiner EICKHOFF. Yes; in the record.

Mr. EDISES. I beg your pardon. I wasn't aware I had
1822 made such a statement. All right.

Mr. MERRICK. Before proceeding with the examination, I want to say that about a week or so ago, when the Regional Director was here, I questioned him about a statement that appeared in the newspaper wherein he had charged the attorney for the Mackay Radio and Telegraph Company was merely resorting to the old trick of trying to draw a red herring across the trail—reference being made to communism at that time, and——

Mr. EDISES. (Interrupting.) Just one moment. I want to object to anything going into the record which refers to any statement made by Mr. Wagenet, especially, when he is not here to refute it.

Mr. MERRICK. Mr. Wagenet had the opportunity to refute it at the time.

Trial Examiner EICKHOFF. You will not take this, Mr. Reporter.

(Discussion off the record.)

Trial Examiner EICKHOFF. Will you please note my order: That any statements or testimony which may now appear on the record concerning the newspaper clipping, or clippings, in which Mr. Wagenet was supposedly quoted to the effect that counsel for the respondent were drawing a red herring across the trail, or words to that effect, be stricken from the record.

1823 H. L. RODMAN, the witness on the stand at the time of adjournment, resumed the stand and testified further, as follows:

Direct examination by Mr. MERRICK:

Q. Mr. Rodman, did you sincerely believe, before the strike and during the strike, and at the time of the conversations that you had with various people that have been testified to in this proceeding, that the leaders of ARTA were communists, and that the organization was being dominated by communists and was associated with other communist organizations, and not being conducted in the best interests of the members of the union?

A. Yes.

Q. Mr. Rodman, when did you first hear about the meeting at the Bellevue Hotel, or the holding of any meeting that night?

A. The holding of any meeting on that night——

Q. (Interrupting.) By the employees?

A. The following morning.

Q. Pardon me?

A. It was the following morning; that is, after the close of the meeting. The meeting was held on October—the early morning of October 8th—you are speaking of the hotel—well, I knew nothing of a meeting to take place at the hotel.

1824 Q. Did you know anything about the holding of any meeting of employees, or former employees of the Mackay and Telegraph Company?

A. My story on that is this: About 10 p. m. I was sitting in my office——

Trial Examiner EICKHOFF. What day was this?

The WITNESS. October 7th—Let's see—the 7th in the morning.

Trial Examiner EICKHOFF. That would be Monday?

The WITNESS. Monday evening—Mr. Jorgensen came in from another room and said he had a phone call from Mr. Hatch. Mr. Hatch wanted him to come out to his house right away and bring a list of all of the operators, and that, I think, there was going to be—no, it wasn't that—there was—I think Mr. Jorgensen said that Mr. Hatch and Mr. Burtz had a plan to get a number of men together, or maybe he said all of them together, and that it looked like they were coming back to work, and if they wanted to come back should we take them back, and I said, "By all means."

He ran out to the telephone and that is the last time I saw Mr. Jorgensen.

In that respect I knew there was going to be a meeting of some kind, but there was no mention of the Bellevue Hotel, or any location other than Mr. Hatch's house.

By Mr. MERRICK:

1825 Q. Is that all of the conversation with Mr. Jorgensen that you recollect?

A. Let's see—He went out into the next room—he was on his way out the door—he had Mr. Hatch on the telephone, I think, in an adjoining room. He was very much in a hurry. I do recall he said—no, I told Mr. Jorgensen, just as he was leaving—I didn't expect to see him again—"Remember, you have got to take care of these men here from New York and Los Angeles."

Mr. Jorgensen said, "Well, what will I do about that?" I said, "You will have to handle it in your own way." He went out the door and that is the last I saw of him.

Q. Previous to this time had you discussed with Mr. Jorgensen, or anyone else, the holding of a meeting of the employees in order to have them given an opportunity to decide whether or not to come back to work?

A. The holding of a meeting?

Q. Yes.

A. No; absolutely not. That telephone call from Mr. Hatch was a complete surprise to me, and I think it was to Mr. Jorgensen too.

Q. Did you take, or authorize, or request anyone else to take any action, other than what you have testified to, in an attempt to induce the men to return to work, or any individual man?

A. To induce the men to return to work—no; unless you
1826 want to say that our attempt at the restoration of service was

an indirect attempt to induce them to return to work. We made an attempt to restore the services.

Q. I mean, did you yourself ask anyone to come back to work, or send out others to try to induce the men to come back to work?

A. No.

Q. Prior to the telephone conversation that you just testified to with Mr. Jorgensen, had you received any instructions from Mr. Stone as to not re-employing certain of the men that were out on strike?

A. Only to the extent that applications would be taken from——

Q. (Interrupting.) I am talking about prior to the telephone call. I mean the conversation with Mr. Jorgensen. Had Mr. Stone told you not to re-employ certain of the men that were out on strike?

A. No.

Q. Did he ever give you any definite instructions in this regard after this conversation, aside from the approving or disapproving of applications for re-employment?

A. He never told me not to re-employ any of them.

Q. I wish you would try and answer these questions first, either "Yes" or "No" and then make any explanation you think necessary.

1827 Mr. MERRICK. I didn't hear the last answer. Will you read it, Mr. Reporter?

(The answer referred to was read aloud by the reporter as above recorded.)

Examination by Trial Examiner EICKHOFF:

Q. Prior to the conversation with Mr. Jorgensen, on the night of Monday, October 7th, had Mr. Stone told you that if certain men were to be re-employed they would have to first file applications?

A. If certain men were to be re-employed—no, certain men were not named by Mr. Stone specifically. Sunday afternoon we had quite a lengthy discussion of the whole situation, Mr. Jorgensen and myself. I should say on Monday afternoon, not Sunday afternoon.

Mr. MERRICK. The Examiner is asking you about a conversation with Mr. Stone.

By Trial Examiner EICKHOFF:

Q. Whether Mr. Stone had directed you to procure applications from certain men in the event they reapplied for work?

A. Naming certain men specifically?

Q. Yes; or a certain group of men.

A. Well; not until after I reported to him that they were still out and had not applied for their jobs.

Q. When was that?

A. Oh, that was about six o'clock in the evening, on Tuesday.

1828 Q. Tuesday?

A. Yes.

By Mr. MERRICK:

Q. Whose idea was it to have the men file applications for re-employment, do you know?

A. Those instructions were received from Mr. Stone, that everyone, everyone taken back—I shouldn't say that—but all persons on strike at any point should file applications for re-employment.

By Trial Examiner EICKHOFF:

Q. Do you know why Mr. Jorgensen limited that to eleven men?

A. When he selected the list of eleven men—yes.

Q. I mean your instructions were that everybody was to file an application?

A. Yes; and that was done.

Q. Now, there has been some testimony to the effect that Mr. Jorgensen only required that eleven men file applications. Do you know why that was?

A. There were eleven applications at that time, according to Mr. Jorgensen's computing, which would have to be sent on to New York for approval by Mr. Stone, by reason of the fact that at that time it was clearly shown that he would have probably eleven men more than he needed.

By Mr. MERRICK:

Q. But what I think the Examiner wants to know, didn't any other men than these eleven file applications for re-employment?

1829 A. Yes. Everyone filed applications for re-employment.

Trial Examiner EICKHOFF. You don't know what took place at the Bellevue meeting?

The WITNESS. I know nothing about the Bellevue, except what I have learned since. Do you wish me to talk to that?

Trial Examiner EICKHOFF. No.

By Mr. MERRICK:

Q. Did you ever give any instructions to Mr. Jorgensen as to what men should not be re-employed?

A. Specifically?

Q. Yes.

A. Not specifically.

Q. It seems to need explanation, your emphasis on the word "specifically"?

A. Yes—because on Monday afternoon, when I was aware of the seven men coming from New York, and two from Chicago, and seven here from Los Angeles already, it was very apparent that if all of our men returned to work we were going to have an over supply.

Q. I don't think we need go into that. You qualified your answer by using the word "specifically." I want to know whether you meant you had indicated the particular persons you had in mind by some other way than using their names.

A. No. What I mean is, we discussed almost everybody in the operating room on Monday afternoon.

Q. When did you first hear of the names that were on this
1830 list of eleven?

A. Oh, I first—the first I heard of that was around about three o'clock in the afternoon of the 8th, when Captain Dodd informed me——

Trial Examiner EICKHOFF. Of the 8th, Tuesday, the 8th?

The WITNESS. Yes; Tuesday, the 8th. That was when I came back in the afternoon.

By Mr. MERRICK:

Q. Did you approve of the way—put it this way: So far as you know, had Mr. Jorgensen assumed the full initial responsibility for the naming of the eleven men?

A. Yes; that was his job.

Q. Did you approve of the way he had handled this matter of the return of the men to work, and providing for the contingency that eleven of the outsiders might remain?

A. Yes. I think he did a good job.

Q. In particular, did you approve of the requirement that he had made that the men on the list of eleven file applications that would be forwarded to Mr. Stone?

A. Yes; I approved of that.

Q. Will you explain why you thought that was proper procedure?

A. In the first place, nearly all changes in personnel are referred to the New York office. In this case there was a special reason and that was that we had men, we had men here from New York,
1831 Chicago, and Los Angeles. Mr. Stone used the personnel on a system basis, and it was entirely in his power to take a man from San Francisco and move him to New Orleans. I view it on a division basis. I had no idea at that time what final disposition Mr. Stone would desire to make of his total personnel.

Examination by Trail Examiner EICKHOFF:

Q. Has the California Company an office in New Orleans?

A. No. That is the Delaware Company.

Q. You transfer employees of the California Company to the Delaware Company?

A. We would on instructions from Mr. Stone. I would not on my own responsibility.

Q. Is he an officer of the Delaware Company?

A. Oh, yes.

Q. What is his capacity, do you know?

A. The same—operating vice-president.

By Mr. MERRICK:

Q. As far as you have any knowledge on the subject, did the list prepared by Mr. Jorgensen have anything whatsoever to do with the failure of Mr. Rone, Mr. Bash, Mr. Loudermilk, or Mr.

Palmer to apply for re-employment, or the failure of the company to re-employ them?

Mr. EDISES. I object to that question. The list was prepared before the re-employment of these men. What possible connection are you interested in showing?

1832 Trial Examiner ELCKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Trial Examiner EICKHOFF. It is purely calling for the witness' conclusion, certainly as to the first part of the question.

Mr. MERRICK. On the basis of any conversation?

Trial Examiner EICKHOFF. I will sustain an objection to the first part.

Mr. MERRICK. He has testified to conversations that he has had with these men, and they themselves testified to conversations that they had with Mr. Rodman. I say, so far as he knows, including any information he received from conversing with them, whether they told him that is the reason they didn't come around earlier.

Trial Examiner EICKHOFF. With that explanation I will allow the question.

A. Are you asking for my opinion now, or the way I saw it at the time?

Trial Examiner EICKHOFF. Not your opinion; what you know about it.

By Mr. MERRICK:

A. Yes, please.

(The question referred to was read aloud by the reporter as above recorded.)

1833 The WITNESS. What I know about it now or at some previous time? I don't quite get it yet.

Mr. MERRICK. All together?

Mr. EDISES. I suggest Mr. Merrick reframe that question and break it down.

Trial Examiner EICKHOFF. Read the question again.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. EDISES. I submit the question is unintelligible in its present form.

Trial Examiner EICKHOFF. It is inaccurate, isn't it? Did none of these men apply?

By Mr. MERRICK:

Q. To apply for re-employment any earlier than the time at which they did apply. Take it in two parts.

Mr. EDISES. Why not put it in two parts?

The WITNESS. There are two questions there.

Mr. MERRICK. That is correct.

Mr. EDISES. I object to shooting a double question to the witness.

Trial Examiner EICKHOFF. Sustained.

By Mr. MERRICK:

Q. So far as you know, did the list prepared by Mr. Jorgensen, and the use made of it by Mr. Jorgensen, have anything whatsoever to do with the failure of Mr. Rone, Mr. Bash, Mr. Loudermilk,
1834 and Mr. Palmer to file applications for re-employment at an earlier time than they actually did file?

A. As far as I know, no; it certainly should not have made any difference.

Mr. EDISES. I object to the witness' characterization as to what they should have done.

Trial Examiner EICKHOFF. It may be stricken if you so move.

Mr. EDISES. I move it be stricken.

Trial Examiner EICKHOFF. Granted.

By Mr. MERRICK:

Q. So far as you have any knowledge on the subject, did the fact that these men's names were on this list have anything whatsoever to do with the failure of the company to re-employ them?

A. No.

Q. Some reference has been made, Mr. Rodman, to the plans of the company to carry on certain limited service here in San Francisco during the strike. Can you state what plans, if any, were formulated in regard to keeping certain circuits open and closing others, and the way that traffic would be handled during the time that the office personnel was reduced?

A. Yes.

Q. When did you first formulate a plan on that subject?

A. I think we started discussions on that subject about
1835 Saturday afternoon.

Q. Anything definite done at that time?

A. Yes. I called a conference, Mr. Warren, Captain Dodd, Mr. Jorgensen, and we discussed ways and means for restoring the service.

It is not absolutely necessary for us to use radio in the domestic services. We decided upon a plan—after getting Mr. Stone's approval—first establishing a transcontinental service between Los Angeles and New York by leasing a control line from Los Angeles to our Palo Alto station, so as to operate it practically the same way that we would from 22 Battery Street, San Francisco; the receiving on that circuit being done directly in Los Angeles.

That was the first step.

Q. How many operators would that have dispensed with in the San Francisco office, approximately?

A. Well, it was entirely possible, with that plan, to dispense with all of the transcontinental operators in San Francisco in that plan.

Q. How many, approximately?

A. Oh, let's see—must be 15 of them. I am not certain of that. Must have been fifteen, I think, in the transcontinental work.

Q. Those were all Class A operators?

1836 A. I think so. But it is perfectly obvious that by sending the messages from New York to Los Angeles that they could be relayed to San Francisco by wire.

In addition to the plan I just mentioned, we also leased from the phone company Morse wires from San Francisco to Los Angeles for coastwise work, and from San Francisco to Portland.

Q. Did you actually lease those wires?

A. Yes, we had them installed and in operation.

Q. The operation of those Morse circuits would have obviated the necessity of having any radio circuits?

A. Entirely.

Q. How many operators, do you know, normally are used in the operation of those coastwise circuits?

A. Let's see—I would guess twenty, at least; approximately twenty, as close as I can count them up quickly.

Q. What was the rest of your plan? What circuits were you going to continue?

A. Radio, or wire, do you refer to?

Q. Radio.

A. It was entirely possible, with the men we had from Los Angeles, by keeping most of them here, and with the men coming out from New York, plus the promise from Mr. Stone that he could send out almost as many men as needed—we centered on our trans-Pacific circuits first. That was the plan, that is, to give them preference.

1837 We had enough men to man the trans-Pacific, and after we finally developed the plan we found we had enough men to handle one transcontinental circuit as well, a radio circuit out of San Francisco to serve as relay on trans-Pacific business.

Q. If the men had not come back to work on Tuesday morning were you prepared to carry out that plan and to bring on enough additional men from New York so that you would not need to re-employ any of those men?

A. Absolutely; that was the plan.

Q. When did you first hear about the holding of a meeting in the Postal clock room, I think, on October 10th?

A. Around 3 o'clock in the afternoon, of the same day, I heard about it.

Q. What did you understand to be the purpose of that meeting?

A. I didn't have any information as to the purpose of the meeting.

Q. For what purpose was it discussed with you?

A. It wasn't discussed with me. One of the operators——

Q. (Interrupting.) Who arranged for the room?

A. I don't know.

Q. You mean you don't know now, or you didn't know at that time?

A. I am not certain now who actually arranged for the room.

Q. You had nothing to do directly with it?

A. No.

1838 Q. Were you informed by anyone before the meeting that this meeting was to be held for the purpose of organizing a Relations Committee among the employees, or some other form of organization independent of the union?

A. No.

Q. Were you ever informed afterwards that anything of that kind was done at the meeting?

A. No.

Q. So far as you know, was that meeting held as the result of any expressions of opinion, or wishes, or indications of your desire that such a meeting be held?

A. My desire?

Q. Yes.

A. No; positively not.

Q. When did you first hear about the round robin?

A. When it was presented to me.

Q. No one ever discussed it with you before?

A. No.

Q. Had you attempted in any way to see that some such document was circulated?

A. No, I knew nothing about it.

Q. Had you asked anyone to take any action to repudiate the union?

A. No, hadn't even thought of it.

Q. Do you know whether any official of the company had 1839 anything whatsoever to do with the drafting or preparation of that?

A. What is that word, "drafting"?

Q. Yes; or preparation of the round robin?

A. I know of no one who had anything to do with it. I don't think any official or any representative of the company had anything to do with it.

Q. When did you first see it?

A. When did I first see it? When it was delivered to me in my office.

Q. Approximately when was that?

A. I don't recall—I don't recall just when it was. It was some after the—it seems to me it must have been within two weeks, I believe, after the strike was called off.

Q. So far as you know, were any special favors, any increases of pay, any specially desirable assignments, or any other form of compensation, direct or indirect, ever given to the men who were active in circulating that round robin?

A. No.

Q. Or to the men who it now appears were active in inducing the men to attend that meeting at the Bellevue Hotel?

A. No; positively not.

Q. Mr. Rodman, can you explain briefly what the effect of the strike was on the operations of the two Mackay Radio and Telegraph Companies, the number of men that went out at the various points, and when they returned?

1840 Trial Examiner EICKHOFF. Which two is that?

Mr. MERRICK. Only two—the Delaware Company and the California Company.

Trial Examiner EICKHOFF. Only two.

By Mr. MERRICK:

Q. Let's take them up in order—How effective was the strike at Seattle?

A. You mean, you speak of effectiveness—it wasn't effective at all. There was a strike but the men promptly returned to work on their own initiative. They got their heads together and came back within a few hours.

Q. They went out and then came back?

A. That is true.

Q. How about Portland?

A. Portland? The city office, all but two men went on strike. We kept the Seattle circuit open and we had one man to work the San Francisco wire. The transmitting station, the man in charge kept it going. At the receiving station——

Q. (interrupting). Did the strikers return at Portland?

A. The strikers did not return in Portland until some time on the 9th.

Q. That is Wednesday?

A. The day after—yes, on the 9th.

Q. Just to digress for a moment, did you ever know when the strike was first officially terminated by the union, or

1841 was it ever officially terminated, as far as you know?

A. I knew Mr. Stone had informed me what Mr. Haddock had promised to do.

Q. What was that?

A. That, in the first place, Mr.——

Q. (interrupting). Just in reference to the ending of the strike, is that what you mean?

A. Yes; that is what I mean. It was agreed; Mr. Haddock had stated that the strike would be, or was considered off, or called off at 10:15 a. m.—that is, Pacific Standard Time, 10:15 a. m.—and that he would telegraph all ARTA locals.

The failure of the ARTA local to be properly advised in Portland was what kept the men out.

Mr. EDISES. I object to the witness' conclusion and voluntary opinion.

Mr. MERRICK. I can get it in another way, if you prefer.

Trial Examiner EICKHOFF. Do you know that to be a fact, Mr. Rodman?

The WITNESS. I have it from a reliable source.

By Mr. MERRICK:

Q. What report did you get from your manager in Portland as to the reason why the men did not return?

A. The report I had from him was that they didn't know the war was over; that ARTA had not advised them the strike was off, but a little later he reported to the contrary; that is, that the
1842 ARTA local there had a telegram signed by Mr. Rathborne saying that he was very much opposed to the strike being called off and to try to keep the men out in Portland on their own hook.

Q. When was that?

A. On the 9th.

Q. Did the strike ever officially end in Portland?

A. I have never heard of it officially terminating in Portland, as far as ARTA was concerned.

Q. What was the effect of the strike in Los Angeles?

A. Practically nil. One man, a marine operator, went out on strike out of our whole Los Angeles force.

Q. How many are in the force?

A. About forty men.

Q. Did he return or did he stay out?

A. That man returned, made application for reinstatement and was promptly re-employed.

Q. When did he re-apply, do you know?

A. He re-applied on about the 9th or 10th—Let's see—about the 9th or 10th. I don't recall just which.

Q. What about New Orleans?

A. Mr. Stone reported to me that none of the men went on strike at New Orleans.

Q. How about Washington, D. C.?

A. The same applies to Washington.

Q. How about Miami, Florida?

1843 A. The same applies to Miami, or to West Palm Beach.

Q. I mean West Palm Beach. When you said the same applies, you mean no one went out on strike?

A. No one went on strike.

Q. How about Rockland, Maine?

A. I had the same advice from Mr. Stone, that no one went out on strike at Rockland, Maine.

Q. How about Chicago?

A. I didn't have the same advice on Chicago. I think he said that practically no one was out at Chicago. I believe Mr. Stone did advise me at some stage of the game that one or two men went out at Chicago; I am not quite sure on that point, but it was not very effective in Chicago.

Q. Did they return, do you know?

Mr. EDISES. At this time I want to ascertain, if possible, just why this particular line of testimony is being introduced. I fail to see

the relevancy of it. It is adding greatly to the record, and, moreover——

[Laughter by Counsel Merrick]

Mr. MERRICK (interrupting). The laugh can go on the record too.

Trial Examiner EICKHOFF. Just a minute!

Mr. EDISES (continuing). Moreover, the witness is clearly testifying on matters not within his own knowledge. I object to
1844 any further testimony along those lines and ask that the previous testimony of what Mr. Stone told him, go out.

Mr. MERRICK. I am perfectly willing that all this go out if all the hearsay evidence introduced on behalf of the Board also goes out.

The relevancy of his testimony is that the witnesses for the Board tried to indicate that the company gave out false information as to the effectiveness of the strike, and tried to discourage the people here in San Francisco by representing to them that the strike was not effective elsewhere, when, as a matter of fact, it was effective.

Mr. EDISES. In what possible way can the testimony being given by Mr. Rodman repudiate that, if the charge is made?

Mr. MERRICK. In my opinion it repudiates it about 100 percent.

Mr. EDISES. He is not giving information of his own knowledge.

Mr. MERRICK. Neither were any of your own witnesses.

Mr. EDISES. Specify the instances in which my witnesses have given hearsay testimony. Perhaps you will find it isn't as you imagine.

I renew my objection to this line of testimony, Mr. Examiner.

Mr. LIVINGSTON. Will the Examiner permit a sugges-
1845 tion?

Trial Examiner EICKHOFF. The way I viewed it is this: that certain men have been charged with working for the company in bringing about the end of the strike and, on behalf of themselves, they stated that they thought that the strike was a lost cause. I think this evidence goes to that. If we start ruling out hearsay, I don't know where to begin or end. This is not the usual type of hearsay because I assume that it may be shown whether or not it is so that these communications were made in the ordinary course of business between two offices of the company. What weight the testimony may be entitled to will have to be seen when the whole case is reviewed.

I will allow the examination.

By Mr. MERRICK:

Q. Did you answer as to Rockland, Maine? I think you did.

Mr. LIVINGSTON. Yes.

By Mr. MERRICK.

Q. Was the strike at all effective at Chicago—I believe you answered that. Do you know whether those two men at Chicago returned to work?

A. No; I do not.

Q. How effective was the strike in New York City?

A. I was informed by Mr. Stone that the operators went on strike and were out for a few hours, but that 84 of them were back to
1846 work about 8 o'clock in the morning, and the strike was called about three o'clock in the morning—as I say, a few hours.

Trial Examiner EICKHOFF. What morning?

The WITNESS. The morning of October 8th, concurrently——

Mr. MERRICK. Wait a minute!

The WITNESS. On the morning of October 4th—wait a minute—the 4th, of course.

Trial Examiner EICKHOFF. Do you want to look at a calendar?

The WITNESS. I know it was the 4th, Mr. Examiner.

Trial Examiner EICKHOFF. What day of the week?

The WITNESS. The day of the week was Friday. It was the night of October 4–5.

By Mr. MERRICK:

Q. The morning of October 5th?

A. The morning of October 5th.

Q. How many men went out?

A. Yes; the morning of October 5th—you mean in New York?

Q. Yes; at midnight.

A. I don't know.

Q. You say that about, or by 8 o'clock in the morning of the 5th, 84 out of how many——

A. (Interrupting). Out of 89, I believe it was, had returned to work.

Q. Do you know whether the remaining men came back at all, in New York?

1847 A. I do not.

Trial Examiner EICKHOFF. We will take a recess for five minutes.

(At this point a recess was taken after which proceedings were resumed as follows:)

By Mr. MERRICK:

Q. Mr. Rodman, there has been produced here, at the early part of the hearing, a memorandum on stationary headed in printing, "Inter-office memorandum," a message addressed from Mr. Watkins to some 15 different people, in the body of which there was a statement that the strike was ineffective at quite a number of stations, and, as I recollect, that 84 out of 93 men were back at work in New York. This memorandum was dated October 6th. Do you know whether you have ever seen that memorandum or a copy of it?

A. I saw it here in the courtroom.

Q. Had you ever seen it before?

A. Not that I remember.

Q. Had you ever requested Mr. Watkins to give out information in regard to the strike situation in other parts of the system?

A. Give out information?

Q. Yes.

A. The information contained in that memorandum was sent to Mr. Watkins for his information and for the information
1848 of all the men at the station.

Q. Did you send it to him?

A. Yes.

Q. Where did you receive it from?

A. From Mr. Stone.

Q. Did you suggest in any way, indicate to Mr. Watkins that you would like to have him give this information to the men here in San Francisco?

A. No.

Q. Or the former employees of the H. B. office?

A. No.

Q. Or send it over to ARTA headquarters?

A. No.

Q. What use was made of that memorandum, as far as you know, by Mr. Watkins? Did he post it on the bulletin board, or what?

A. I don't know. Presumably he posted it on the bulletin board. That would be the normal usage of it.

Q. Were the names of the men to whom it was addressed the employees at the station under Mr. Watkins' supervision?

A. They were under his supervision; yes.

Q. Then the memorandum was issued in the normal, ordinary course of business by Mr. Watkins at the station for the information of his men at that station?

A. Yes.

1849 Q. What was the source of the information that you have testified to here, as to the effect of the strike at other parts than those in regard to which you had personal knowledge? How did you get your information?

A. In the eastern part of the United States, or all stations connected with the Delaware Company, both telephone and telegraph, from Mr. Stone. I consider all information I got from Mr. Stone as being authentic.

Q. And he is your immediate superior?

A. That is true.

Mr. EDISES. I want to request that the statement as to how he considered the information he got from Mr. Stone, go out of the record.

Trial Examiner EICKHOFF. On what grounds?

Mr. EDISES. On the ground that it is a gratuitous, purely voluntary statement of opinion by the witness.

Trial Examiner EICKHOFF. We have had so much of that, there is no use of splitting hairs at this time.

By Mr. MERRICK:

Q. Were these conversations that you had with Mr. Stone, and the telegrams that you received from him, in the ordinary and regular course of business?

A. In the ordinary course of business. Of course, during the period of, that is, the interruption of service, I wouldn't call that exactly normal.

1850 Examination by Trial Examiner EICKHOFF:

Q. Did you ever receive any different information than that given to you by Mr. Stone?

A. I had heard different information; yes.

Q. In the light of subsequent events, would you say that Mr. Stone's advices to you were accurate or inaccurate?

A. I would say that they were very accurate. In the light of subsequent events it checks with Mr. Salisbury's published information with respect to New York.

Q. For what purpose did Mr. Stone give you this information?

A. He gave me a report on the situation there as compared with the situation out here. We exchanged information.

Q. Did he tell you to use it for publicity or propaganda purposes?

A. No; except only to inform our own people. We did not release it to the press.

Q. And at the times that he communicated with you, you had no reason to believe that he was giving you this information for any purpose except to inform you as to the actual conditions?

A. Informative, so that our people would have exact information as to what we believed to be the true picture.

Q. You say you subsequently heard of some conflicting information. What was that?

A. All sorts of reports trickled in in various ways. For
1851 example, our Portland office reported to me that the ARTA there had a telegram signed by Mr. Rathborne, of San Francisco, reporting Los Angeles out on strike 100 per cent. I knew Los Angeles was not on strike 100 per cent. Only one man was out on strike. Obviously, in the face of such a report we took steps to inform our managers of the true situation.

By Mr. MERRICK:

Q. Did you receive any reports other than from Mr. Stone that you considered to be authentic? Of these conflicting reports that you received, did you think any of them came from authentic sources or entitled to belief?

Mr. EDISES. I object to Mr. Merrick asking a leading question of the witness.

Trial Examiner EICKHOFF. Overruled. It is not a leading question.

The WITNESS. Will you read the question again, please?

(The question referred to was read aloud by the reporter as above recorded.)

Mr. EDISES. Also on the ground that it calls for the witness' opinion and conclusion.

Mr. MERRICK. That is the reason it is asked.

Mr. EDISES. I am aware of the fact, Mr. Merrick.

A. None of the reports——

Mr. MERRICK. (Interrupting.) Wait a minute! There is to be a ruling.

1852 Trial Examiner EICKHOFF. You just stated a new ground. I had already overruled the objection.

By Mr. MERRICK:

Q. Go ahead.

A. The only reliable reports I ever received were from Mr. Stone or other officials of Mackay Radio.

Q. Please answer the question I asked you as directly as you can. You referred to conflicting reports that you have received, in answer to a question from the Examiner. Were any of these reports which you received, that conflicted with the information you received from Mr. Stone, from sources that you thought entitled to belief?

A. No.

Trial Examiner EICKHOFF. The only question that is important in my mind is which reports had been proved to be accurate. Now, have any of these conflicting reports you speak of proved to be accurate?

The WITNESS. No.

Trial Examiner EICKHOFF. Then you would say that all of the reports which Mr. Stone gave you regarding conditions, in the light of subsequent events and knowledge, have proven to be accurate?

The WITNESS. Absolutely accurate.

By Mr. MERRICK:

Q. Did Mr. Stone, at any time, request or suggest that you use the information you had received from him for the purpose
1853 of distributing it among the men out on strike in an endeavor to induce them to return to work?

A. No, only to inform our own people, our managers.

Q. Did you at any time, or do you know of any instance when any other official of your company had any correspondence, conversation, or other communication of any character whatsoever, with McDonough, wherein any activities of any kind or character by Mr. McDonough, or any other employee of the company were discussed or suggested, whereby the activities of ARTA would be prevented or in any manner interfered with?

A. No.

Q. Will you answer that same question in respect to Mr. McLaughlin?

A. The answer is "No."

Q. Mr. Hatch?

A. No.

Q. Mr. Burtz?

A. Same answer, no.

Q. Mr. Spanover?

A. No.
Q. Or any other employee of the company?
A. No other employee.
Q. Did you ever have, or do you know any instance, when any other official of your company had any conversation, correspondence or other communication of any character whatsoever, with McDonough, wherein the discouragement of membership in ARTA was discussed, or wherein anything was said, written, or done looking toward activity by McDonough, or any other employee of the company, to obstruct or interfere with the conduct of the strike called by ARTA?
1854
A. No.
Q. Will you answer the same question in respect to Mr. McLaughlin?
A. The answer is "No."
Q. Mr. Burtz?
A. No.
Q. Mr. Hatch?
A. No.
Q. Mr. Spanover?
A. No.
Q. Or any other employee of the company?
A. No.
Q. Did you ever have, or do you know of any instance when any other official of your company had any conversation, correspondence, or other communication of any character whatsoever, with McDonough, wherein it was discussed or suggested any activity by McDonough, or any other employee of the company, looking toward the formation of the union, other than ARTA, or an organization of company employees or an organization of any committee or group of company employees which would represent the employees in dealing with the company?
1855
Mr. EDISES. Just one moment. Does the Examiner consider that type of question a proper one to ask on direct examination?
Trial Examiner EICKHOFF. I think it might save a lot of time, if the witness understands it, and you can cross examine on it.
Mr. MERRICK. Is the question answered, Mr. Reporter?
The REPORTER. No.
Trial Examiner EICKHOFF. I answered his question, Mr. Merrick.
A. No.

By Mr. MERRICK:

Q. Will you answer the same question in respect to Mr. McLaughlin?
A. No.
Q. Mr. Hatch?
A. No.
Q. Mr. Burtz?
A. No.

Q. Mr. Spanover?
A. No.
Q. Or any other employee of the company?
A. No.

Q. Have you ever, or do you know of any instance when
1856 any other official of your company in any manner whatsoever, took any steps or did anything, or wrote any letter or telegram, the purpose of which was to discourage any employee from joining, or continuing as a member of ARTA, or to encourage any persons in joining any other group or organization of employees?

A. No.

Q. Have you ever, or do you know of any instance when any other official of your company ever directly requested, or authorized, or suggested that any employee should join ARTA, or attend its meetings and report to you, or any other official of the company, as to the activities of the union, or any of its members?

A. No.

Q. Have you ever, or to your knowledge has any official of the company ever paid, directly or indirectly, any dues or fees of any kind to the union for any employee of the company?

A. Positively not.

Q. Have you ever, or do you know of any instance when any other official of your company employed any spy, or person such as is generally known as a stool pigeon, on behalf of the company in connection with its relations with any union, or in connection with the conduct of the strike which has been testified to in this
1857 proceeding, or in connection with the relation of your company with its employees?

A. No.

Q. Have you ever, or to your knowledge has any officer of your company ever taken any steps whatsoever to interfere with the strike activities of ARTA, except that you employed men to take the place of the strikers, and took back all those men who applied for reemployment as long as there were any vacancies, regardless of whether or not ARTA had officially called off the strike?

Mr. EDISES. Mr. Examiner, I want to renew my objection to questions which embrace the enormous expanse of territory, such as these questions do, and also in particular, the last one, on the ground that it is obviously leading.

Trial Examiner EICKHOFF. Do you think the witness would give any different answers if these things were taken up item by item?

Mr. EDISES. I fail to see the possible evidentiary value of this type of question and answer.

Mr. LIVINGSTON. Of course, if the witness is telling the truth, we feel, Mr. Examiner, there is no case. There is the evidence.

Trial Examiner EICKHOFF. I wouldn't say that.

Mr. LIVINGSTON. I would.

Trial Examiner EICKHOFF. We are talking about what this witness knows.

1858 Mr. LIVINGSTON. Yes. If this witness, and the other witnesses, are telling the truth along this line, there is no case. That is the story.

Trial Examiner EICKHOFF. Well, that is a rather far-fetched reason for a question. Naturally, all your questions would establish your case.

Addressing our scrutiny to the particular question, ordinarily I would say it was too long and too complex, but I am assuming that if it were taken up with the witness piecemeal he would say, "No," "No," "No."

Now, counsel for the Board may cross examine and go into all the details later.

If you prefer to go into a more extensive form of interrogation, why I might allow it, but I think it is to the best interests of all concerned to allow this long question.

Mr. EDISES. I submit to Mr. Merrick that it would be exactly the same effect as if he would ask the witness whether he believes there is anything in the Board's complaint.

Trial Examiner EICKHOFF. Well, that is also far-fetched.

Mr. MERRICK. There is a question pending. Do you want it read back?

The WITNESS. Please.

1859 (The question referred to was read aloud by the reporter as above recorded.)

Mr. EDISES. I renew my objection to this question on the former grounds stated, and, in addition, on the ground that it is leading and suggestive.

Trial Examiner EICKHOFF. Mr. Merrick, are you willing to lend those written questions to Mr. Edises when he cross examines?

Mr. MERRICK. Surely.

Trial Examiner EICKHOFF. Very well, I will allow the question.

A. The answer is "No."

By Mr. MERRICK:

Q. Have you ever, or to your knowledge has any other officer of the company, taken any steps whatsoever to interfere with any person joining ARTA, or remaining a member thereof?

A. Absolutely not.

Q. Have you, or to your knowledge has any other officer of the company ever suggested, encouraged in any way the idea of holding a meeting to terminate the strike, or induce the men to return to work?

A. No.

Q. Did you, or to your knowledge, has any office of the company ever done anything whatsoever for the purpose of promoting an organization of the employees of your company

1860 independently of ARTA?

A. No.

Q. Have you, or to your knowledge has any other officer of the company, ever made any financial contribution, either for themselves or yourself personally, or for your company, or authorized any such financial contribution to any labor organization?

A. No.

Q. Have you, or to your knowledge has any other officer of the company, ever given any other form of support or assistance to a labor organization?

A. No.

Q. If you don't know what that means, I can not tell you either. That is the wording of the Act.

Have you ever discriminated, or has any other officer of your company to your knowledge, ever discriminated in regard to the hire or tenure of employment, of any terms or conditions of employment for the purpose of encouraging or discouraging membership in any labor organization?

A. No.

Q. Have you, or to your knowledge, has any other officer of your company, even interfered with, restrained, or coerced, or attempted to interfere with, restrain, or coerce, any employees of your company in connection with their right to self-organization and to form, 1861 join, or assist labor organizations of their own choosing, or to engage in any concerted activity through representatives of their own choosing?

A. The answer is "No."

Trial Examiner EICKHOFF. Mr. Rodman, who was it that sent the round robin back so that all the men might have an opportunity to sign it?

The WITNESS. I don't know. That happened before I received it. Based on what I have heard here——

Mr. MERRICK. (Interrupting.) In reference to the last question put by the Examiner, Mr. Jorgensen testified to some extent on that, but I am going to put him on the stand again—it will be the first time I have put him on—to ask him these questions, and I will be glad to have him at that time give further explanation as to the incident you referred to.

Trial Examiner EICKHOFF. I am wondering whether Mr. Rodman himself had ordered it sent back.

By Mr. MERRICK:

Q. You didn't know anything about it at that time, or did you know anything about it at that time?

A. No.

Examination by Trial Examiner EICKHOFF:

Q. Did you know whether or not the meeting at the Bellevue Hotel was an ARTA meeting?

A. At what period of time do you speak, Mr. Examiner?

1862. Q. Well, the next day?

A. When I first heard—the answer is that Mr. Jorgensen informed me that it had not been an ARTA meeting; that it was a meeting of the H. B. employees.

Q. When did he give you that information?

A. I am mistaken about Mr. Jorgensen—it was Captain Dodd. It was about 3 o'clock in the afternoon of Tuesday, the 8th, that would be.

Q. And you knew that at that meeting the company had extended some offer of re-employment to those present?

A. Well, I received the full report on what had taken place the previous night. I had not been at the office all that morning. I had no contact with Mr. Jorgensen that morning.

Mr. MERRICK. No further questions, except that I would like to reserve the right to recall him, or ask him a few more questions on direct at the end of the cross, if I decide to do so.

Mr. EDISES. Redirect.

Trial Examiner EICKHOFF. Have you any cross examination?

Mr. EDISES. Yes. I don't quite understand Mr. Merrick's request. Is he withholding some of his case? I think he should bring out anything through this witness that he wants to at this time.

Mr. LIVINGSTON. There is no plot involved. We want to get a chance to talk.

1863 Mr. EDISES. I simply want an explanation, that is all.

Trial Examiner EICKHOFF. I assume that it will be the usual redirect?

Mr. MERRICK. No. Mr. Livingston asked if I didn't think we ought to ask some additional questions. At the present time I think it is unnecessary. He asked to request permission to ask them later if he can convince me they should be asked.

Trial Examiner EICKHOFF. Not having my crystal present I can not very well rule on that.

We will take that up when we come to it.

Mr. EDISES. May we have a five minute recess, Mr. Examiner, or would it be possible to adjourn at this time and report back at 20 minutes of two? Would that be agreeable?

Mr. MERRICK. Agreeable.

Trial Examiner EICKHOFF. Is it agreeable to you, Mr. Rodman?

The WITNESS. Yes; all right with me.

Trial Examiner EICKHOFF. We will adjourn until 1:40.

(Thereupon, at 11:40 o'clock a. m. a recess was taken until 1:40 o'clock p. m.)

1864 AFTER RECESS

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner EICKHOFF. Are you ready to proceed?

Mr. LIVINGSTON. Yes.

Mr. EDISES. Ready.

(Thereupon counsel and the Trial Examiner went into private consultation.)

Trial Examiner EICKHOFF. Have you a statement to make, Mr. Livingston?

Mr. LIVINGSTON. If the Examiner pleases, and Mr. Edises, during the examination of Mr. Rodman by Mr. Merrick something was said as to a charge made against Mr. Phelps by the floorman of the Stock Exchange and, in connection with that charge, the floorman requested Mr. Phelps' dismissal.

We do not care to air the nature of that charge and, therefore, propose the following stipulation:

That if the charge, as so made by the floorman of the Stock Exchange, was true, then at that time the company would have been justified in discharging Phelps.

Mr. EDISES. It is understood that this charge was made several months prior to the strike and that Mr. Phelps was not, in fact, discharged at that time as a consequence of the charge.

Mr. MERRICK. Yes.

1865 Mr. LIVINGSTON. Yes.

(Thereupon counsel and the Trial Examiner conferred privately.)

Mr. EDISES. It is so stipulated.

It is understood that nothing that has been said here has any bearing upon, or admits the truth of the charge against Phelps.

Mr. LIVINGSTON. Nothing that you have said is to be deemed as any admission whatsoever, Mr. Edises, excepting exactly what you stipulated to.

Mr. MERRICK. Mr. Examiner, with the consent of the attorney for the Board, I would like permission to ask, through Mr. Livingston, one more question of Mr. Rodman before he is examined on cross examination.

H. L. RODMAN, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Direct examination by Mr. LIVINGSTON:

Q. Mr. Rodman, there has been some reference to Mr. Dewey in your testimony. What is Mr. Dewey's official title?

A. His official title on the payroll is metropolitan manager.

Q. Has Mr. Dewey been working with the company during the last two or three weeks?

A. No. Mr. Dewey is on sick leave.

1866 Q. Have you made any investigation as to the extent of his illness?

A. Yes. We have a report from his doctor.

Q. Will you state generally what the nature of his illness is?

A. Yes. The doctor's report is hypertension and myocarditis.

Q. Myocarditis?

A. Sort of a heart ailment.

Q. Have you made any investigation to ascertain whether he can be spoken to with reference to any matters involved in this case, with safety?

A. I attempted to visit him several days ago and was denied permission. Last night, rather late, I talked with Mrs. Dewey, inquiring how he was, and during the conversation I asked if there was a telephone close to his bedside, and she said he couldn't possibly be disturbed.

Q. Have you received any information to the effect that any attempt to interview Mr. Dewey, or take his deposition, might result fatally and cause his death?

A. Yes. Mrs. Dewey is very much concerned over his health. She feels——

Q. (Interrupting.) The question is, have you received any information to the effect that if he were interviewed at the present
1867 time, or if a deposition was taken from him at the present time, it might result fatally to him?

A. I can't say that I have that information specifically.

Q. Well, have you any information on that general line, as to whether he can, with safety, be interviewed or his deposition taken?

A. The only thing is I was denied permission to see him, and I was told no one could see him.

Q. What reason was given to you for that?

A. Because he is too ill. Besides, his mind is stated to be affected by his present illness.

Q. And you have also been told that his mind has been affected by his present illness, is that correct?

A. Yes.

Q. Up to the time that he took sick leave, will you please state his duties with reference to the company?

A. Mr. Dewey's duties are commercial in the City of San Francisco, including Oakland. He sells the service of Mackay Radio to the public.

Q. His job, then, was to sell your service in San Francisco and Oakland, is that correct?

A. That is true.

Q. Had he any jurisdiction over any of the operators whatsoever?

A. In the H. B. operating room?

Q. Yes.

1868 A. No, none.

Q. Did he have jurisdiction over the Stock Exchange operator?

A. Yes.

Q. That is now Mr. Dugan?

A. Mr. Dugan is the present manager of the Stock Exchange branch, yes.

Q. He reports to Mr. Dewey.

A. Yes.

Q. And that was at one time Mr. Phelps?

A. Correct.

Q. The functions of the Stock Exchange operator is to sell the services of the company, as well as to operate; is that correct?

A. It is a combination commercial and operator, yes.

Q. Is there an assistant operator in that office also?

A. Yes, when the business demands it.

Q. And those are the only operators with whom Mr. Dewey had any relationship whatsoever, is that correct?

Mr. EDISES. I imagine that counsel could better qualify that question by limiting——

Mr. LIVINGSTON (interrupting). I will withdraw the question.

By Mr. LIVINGSTON:

Q. Those are the only operators with whom Mr. Dewey had any connection whatsoever in behalf of the company, is that correct?

1869

A. He had no——

Q. (Interrupting.) Just answer the question.

A. No other operators reported to him.

Q. Will you answer the question "Yes" or "No"? Did Mr. Dewey have any official relationship with any other operators outside of the Stock Exchange office?

A. No.

Q. Did he have any jurisdiction over the hiring or firing of any operators outside the Stock Exchange office?

A. No.

Q. Did he have any jurisdiction or relationship between the company and other operators outside the Stock Exchange office?

A. No.

Q. The other operators, other than in this office, are under the jurisdiction of Mr. Jorgensen?

A. Yes.

Q. And Mr. Jorgensen, in turn, reports to you and Captain Dodd, is that correct?

A. That is correct.

Q. And those operators are entirely outside Mr. Dewey's jurisdiction, and always were; isn't that so?

A. Yes; sir.

Q. Did you ever hear Mr. Dewey say anything to you, or any one else, to the effect that the company would spend its last dollar rather than permit the union to go on?

1870

A. No.

Mr. EDISES. Just a moment! I am going to object to the witness being asked these questions in regard to what Mr. Dewey said.

Trial Examiner EICKHOFF. He only asked Mr. Rodman if he had ever heard them.

Mr. EDISES. I believe, in view of the unavoidable absence of Mr. Dewey, it might be advisable to leave matters as they stand. If any further testimony is to be brought out on the subject, I am going to object to it.

Mr. LIVINGSTON. I will take a ruling.

Trial Examiner EICKHOFF. Is there any objection to this question?

Mr. LIVINGSTON. I thought so.

Mr. EDISES. I have no idea what sort of thing he is going to bring out from Mr. Rodman in regard to Mr. Dewey's statements.

Trial Examiner EICKHOFF. I will allow the question.

By Mr. LIVINGSTON:

Q. The question is whether you ever heard Mr. Dewey say anything to the effect that the company would spend its last dollar to beat or break the union and avoid unionizing the employes.

A. No.

1871 Q. Do you know of the company ever employing any armed guards, your company?

A. Armed guards—we employed guards during the strike to protect our property.

Q. Where?

A. At all points on the Pacific Coast where we operate.

Q. With rifles?

A. No. We employed guards. They had no rifles, to the best of my knowledge. To the best of my knowledge they carried no arms of any kind. We dealt with the agencies that are in that business. I don't think I ever saw one, except there in the building.

Q. Was that a Pinkerton man in your building?

A. Yes. They were all Pinkerton men.

Q. You didn't employ men with rifles to lurk in the bushes, that you know of?

A. No, of course not.

Q. Did Mr. Dewey ever speak to you or discuss with you the employment of armed men?

A. No.

Q. To protect company property, did he?

A. That is possible that during the strike, when we were lining up——

Q. (Interrupting.) Did he or did he not? I don't want possibilities. I want facts.

1872 A. I don't remember.

Q. You don't remember any such conversation, is that right?

A. No.

Q. Did Mr. Dewey ever have any discussion with you about breaking the union?

A. No.

Q. You never talked about the union relationship with Mr. Dewey at any length?

Mr. EDISES. I object to that as leading and suggestive.

Trial Examiner EICKHOFF. Sustained.

By Mr. LIVINGSTON:

Q. Did you ever hear from Mr. Dewey, or anyone else, until you heard Mr. Phelps' testimony, about the conversation of October 15th, in which Mr. Dewey is alleged to have said that the company would spend its last dollar to fight the union, and that they had armed guards, and never could have won the strike, and the like of that?

A. I didn't hear anything, except Mr. Phelps' testimony, and I never heard Mr. Dewey say any such thing.

Q. You never heard any such thing before, did you?

A. No, sir.

Mr. EDISES. I object to the question as leading and suggestive.

1873 Mr. LIVINGSTON. It is already answered.

Mr. EDISES. Is that all?

Mr. LIVINGSTON. That is all.

Cross examination by Mr. EDISES:

Q. Did you order the guards that you have just spoken about?

A. Yes.

Q. How did you order them—who did you order them from?

A. Pinkerton.

Q. Did you ever have any prior dealings with Pinkerton?

A. Prior dealings?

Q. Yes.

A. No.

Q. Did you specify whether these guard were to be armed or unarmed?

A. I did not.

Q. Do you, as a matter of fact, know whether they were armed or unarmed?

A. Those that I saw with my own eyes, I know they were not armed.

Q. Did you ascertain whether or not they carried revolvers on their persons?

A. I did not search them.

Q. Did you see all of the guards whom you hired from Pinkerton?

1874 Q. How many did you see?

A. Those on duty at 22 Battery Street; I think there were about two or three.

Q. How many did you hire?

A. I don't know.

Q. Ten or more?

A. Speaking in San Francisco only, I presume? You mean San Francisco only?

Q. First, in San Francisco.
A. In the San Francisco area, only about ten or twelve.
Q. And how many all together on the Pacific Coast?
Mr. MERRICK. I object to that as irrelevant and immaterial.
Trial Examiner EICKHOFF. Overruled.
A. I should judge about 18 all together on the Pacific Coast.

By Mr. EDISES:

Q. How many days did those men work for you?
A. From four to six days.
Q. How much did you pay Pinkerton for those services?
Trial Examiner EICKHOFF. I don't think that is material, Mr. Edises.

By Mr. EDISES:

Q. It has been testified that Mr. McDonough, after he arrived, was at your request transferred to a special line of work, is that correct?
1875 A. That is true.
Q. And did he thereafter work under your supervision?
A. With the exception of the period while he was on vacation.
Q. He didn't work for Mr. Dewey; he worked for you, is that correct?
A. He did not work for Mr. Dewey. He worked for me.
Q. And his job was solicitation at the Stock Exchange and in the financial district?
A. He was detailed to that work.
Q. Ordinarily who was in charge of the solicitors in the financial district?
A. Ordinarily Mr. Dewey would be.
Q. Was that the whole of Mr. McDonough's activities when he was out here?
A. No. He had general charge of that draft of men here from New York.
Q. Even after he arrived?
A. Functional matters, taking care of the expense account, and——
Mr. LIVINGSTON. The question is——

By Mr. EDISES:

Q. Even after he arrived; that was the question.
A. After he arrived in San Francisco and reported in for duty, he had no further jurisdiction over the men who came
1876 from New York, other than as a matter of convenience to take care, or assist in taking care of the payroll and expense accounts, putting it all in one account.
Q. So that you kept the Eastern men as a separate group, and Mr. McDonough took charge of their expense account, payroll, and so on?
A. Naturally.
Q. Did he do anything else?

A. The only work that McDonough did for me was solicitation work, and that was enough.

Q. In the San Francisco financial district?

A. Yes.

Q. What was he doing down at Lobitos?

A. Lobitos—visiting the station for educational purposes.

Q. And what do you mean by educational purposes?

A. It is common practice for a visiting radio operator from a distant point to visit the radio station to increase their knowledge of the business of the stations, of the company's stations.

Q. And what else was he supposed to do down at Lobitos?

A. Supposed to do?

Q. Yes.

A. Absolutely nothing, as far as I know.

Q. You knew he was going down there?

A. Naturally; he asked permission to visit the station.

1877 Q. You know what he did while he was down there?

A. Just visited the station, as far as I know, like dozens of others do.

Q. Well, you also know that he brought up the question of a relations committee down there, don't you?

A. No, I never heard of it.

Q. You stated that Mr. Loudermilk and Mr. Palmer called on you Tuesday afternoon, October 8th. Do you remember exactly the time that they first called at the office and asked to see you?

A. I don't remember myself, but I was informed by Miss O'Connor, my secretary, that they called at about 5:15, shortly after 5 o'clock.

Q. As a matter of fact, you heard Mr. Loudermilk testify that they called also around 2:30 in the afternoon and asked to see you and were refused permission. Do you remember that testimony?

A. I don't recall hearing that.

Q. Do you remember now? Is it possible that they could have come around 2:30 in the afternoon and asked to see you?

A. Is it possible?

Q. Yes.

A. I suppose it is, but not within my knowledge it is not possible.

Q. And later they came back, around 5?

1878. A. I am positive it was shortly after 5 o'clock.

Q. Did you ever tell your secretary, or any one else, to bring them in and that you would see them?

A. No.

Q. In other words, their meeting with you was purely accidental? You never consented to meet them?

A. That is true; this meeting, when I finally talked with them, was accidental.

Q. They caught you just as you were leaving the building, is that correct?

A. Right.

Q. You knew they wanted to see you earlier, however?
A. Right.
Q. I presume that you have a good deal of inter-office communication with the various managers of the different offices, Portland, Seattle, Los Angeles, and so on?
A. Yes.
Q. And ordinarily that correspondence is carried on on the regular stationery of the company, is that correct?
A. Yes.
Q. Is this the inter-office memorandum form that is customarily used?
A. (Examining form indicated.) "Inter-office memorandum—from, to and subject." Yes; that is the customary form.
1879 Trial Examiner EICKHOFF. What exhibit is that you are referring to?
Mr. EDISES. It is Respondent's Exhibit No. 3.

By Mr. EDISES:

Q. I presume that it is always clear who the information comes from and to whom the correspondence is addressed, is that correct?
Mr. LIVINGSTON. I object to that as a hypothetical question. If he has a document, it is easy to find out if it is authentic without going through hypothesis of that kind.
Trial Examiner EICKHOFF. In your routine of sending inter-office memoranda, is the sender and the receiver usually identified?
The WITNESS. Yes, sir; on the form.

By Mr. EDISES:

Q. I show you Respondent's Exhibit No. 13, and ask you where that came from.
A. (Examining Respondent's Exhibit No. 13.) This is a copy of a report that came to me from our manager at Portland.
Q. Have you the original?
A. The original was sent to Mr. Stone in New York.
Q. I note that this copy has no signature. How do you explain that?
A. That report was not written by our Portland manager. That report was attached to a memorandum from our Portland manager.
Q. And who prepared this report?
1880 A. An outsider.
Q. Meaning who?
A. I don't know.
Q. Well, as a matter of fact, it was a detective agency, wasn't it?
A. No; it was not.
Q. Then how do you know it was prepared by an outsider?
A. I do know that.
Q. Who was the outsider?
A. I know the outsider's name, but it would be a breach of confidence for me to mention it, I think.

Q. Can you tell us what this outsider's business was?

A. I don't know that he has any business.

Q. Do you receive other reports of this nature from this outsider?

A. No; that is the only one of that nature ever received from that party.

Q. This exhibit purports to specify certain communistic activities or affiliations of ARTA. Am I correct in stating that your testimony was that this report was the basis of your knowledge of the alleged communistic affiliations or activities of ARTA?

A. Not entirely.

Q. What were the other bases of your knowledge on that subject?

1881 A. Well, I first heard of ARTA—when I first heard of ARTA it was through a man named Mathison. I knew Mr. Mathison, had known him many years before, as a radio operator and as a writer of fiction. I knew he had spent some time in Russia, and he came back to New York and handed in a card in the Russian language, gave it to Mr. Tuel, and I saw that card myself later. I happen to read and write a little Russian, and I know what it said.

Q. Have you that card?

A. No. There was no mystery about that. Mr. Mathison carried an identification card and was an admitted communist, and sometimes bragged about it to his closest friends.

Q. Did he ever brag about it to you?

A. Surely, and to Mr. Tuel, too.

Q. And were you one of his closest friends?

A. No.

Mr. LIVINGSTON. He didn't say that. You are not trying to make a communist out of him, are you?

Mr. EDISES. I am perfectly willing to follow the evidence wherever it goes.

Mr. LIVINGSTON. You will.

By Mr. EDISES:

Q. Is Mr. Mathison still connected with ARTA?

A. I don't know.

Q. As a matter of fact, you know he was removed from

1882 his position, don't you?

Mr. MERRICK. I object to getting testimony this way. He said he didn't know.

By Mr. EDISES:

Q. Now, apart from your knowledge of Mr. Mathison's trip to Russia, what other source of information have you——

Mr. MERRICK (interrupting). I have no objection except from the point of view of going into rumors that Mr. Rodman may have heard. It doesn't seem that is relevant or material, and it will only prolong the trial unduly, and I think should not be permitted.

Trial Examiner EICKHOFF. I don't think this is a profitable line of inquiry.

By Mr. EDISES:

Q. Did you ever have any authenticated information along the lines that you have just indicated?

A. I don't know what you mean by that. Are you speaking about Mr. Mathison?

Q. Apart from Mr. Mathison, in regard to the alleged communistic nature of ARTA?

A. Well, during the strike—during the trouble, strike troubles between the steamship people and the longshoremen, I read a great many dispatches, reports in the newspapers quoting what had been stated, or found out by the steamship managers, such as Thomas G. Plant and some of the charges in the press they openly
1883 charged Mr. Bridges as being directed by communists, and ARTA, as a member of the Maritime Federation, so what other conclusion could a man come to?

Q. And that was the basis of your belief?

A. That is a part of it.

Q. Did you have any more specific sources of information than newspaper reports?

Trial Examiner EICKHOFF. I think that is enough of that, Mr. Edises, unless you really want to go into this whole subject, which would keep us here probably a couple of years.

By Mr. EDISES:

Q. What specific information did you have as to the political convictions or affiliations of Mr. Loudermilk, Palmer, Rone and Bash, other than the fact that they belonged to ARTA?

A. None whatsoever.

Mr. LIVINGSTON. Mr. Edises, is there any objection, merely to save time and the length of the record, to a stipulation that Mr. Volney Mathison, the gentleman referred to by the witness, was the vice-president of ARTA from the time of its organization up to December 3, 1934?

Mr. EDISES. No, provided you will also stipulate he was kicked out of ARTA about the early part of 1935.

Mr. LIVINGSTON. "Kicked" is a wicked word and we will put in the minutes, which will show exactly what happened to him.
1884 Mr. EDISES. December 3, 1934.

Mr. LIVINGSTON. You can put the minutes in evidence and we can stipulate that those minutes are minutes of what occurred.

Mr. EDISES. Do you offer these in evidence?

Trial Examiner EICKHOFF. Do you want them in evidence, or is the other side offering them?

Mr. LIVINGSTON. I don't want them in. I just wanted the record to show who he was, and that he was connected with ARTA as an official for a period of a good many months, up to December 3, 1934.

Trial Examiner EICKHOFF. Suppose you put them in at the end of cross examination.

Mr. LIVINGSTON. I asked for a stipulation that he was an officer. Counsel asked me to stipulate that he was kicked out. I say, instead of stipulating to something that I am not quite sure of, let's put in the minutes that show what happened to him. I don't care how it is done.

Mr. EDISES. Will you offer them in evidence at the close of your case?

Mr. LIVINGSTON. Have you any objection to offering them?

Mr. EDISES. You presented them first. Why don't you suggest their going in?

Mr. LIVINGSTON. No. I will ask you for a stipulation
1885 again. May it be stipulated that Mr. Mathison was the vice-president of ARTA from its organization to December 3, 1934.

Mr. EDISES. I believe that is a fact.

Mr. LIVINGSTON. That is all I want.

Mr. EDISES. And a further stipulation that Mr. Mathison was relieved from his position on December 3, 1934.

Mr. LIVINGSTON. Let me look at the minutes and I will tell you in a few minutes. You can go ahead and I will give you an answer to that in a few minutes.

By Mr. EDISES:

Q. Did you feel, Mr. Rodman, that it was a proper thing for a branch manager of Mackay to joint a union?

A. No, I did not.

Q. And what was your feeling in that connection?

A. Just that.

Q. Can you explain a little further?

A. Not a proper thing.

Q. You understand that I am referring to Mr. Phelps?

A. You said a branch manager?

Q. Yes.

A. Mr. Phelps was a branch manager.

Q. Did you likewise feel it was a highly improper thing for a branch manager, namely, Mr. Phelps, to go out on strike when the union called a strike?

A. No.

Q. Will you explain that answer?

1886 A. Well, once a man becomes a member of the union he has got to do what the rest of them do. After Mr. Phelps became a member of ARTA I don't—that is, I wouldn't say that I didn't expect him to go out on strike if ARTA called a strike.

Q. You never lost the feeling, however, that it was highly improper for Mr. Phelps, in his position as a branch manager of Mackay Radio, to become affiliated with a labor organization, is that correct?

A. The first part of that question, please.

(The question referred to was read aloud by the reporter as above recorded.)

A. I will answer that by saying we did not approve of a commercial man, in charge of an office, becoming a member of an organization such as ARTA.

By Mr. EDISES:

Q. And when ARTA called a strike, that confirmed your feeling in that regard, did it not?

A. It wasn't necessary to do that to confirm my feeling.

Q. It was already pretty strong?

A. Not strong, but a foregone conclusion.

Q. A foregone conclusion?

A. Yes.

Q. When you had your lengthy conversation with Mr. Jorgensen on Monday afternoon, I believe it was, you discussed all of the H. B. men with reference to their value to the company, I suppose?

1887 A. We discussed, I think, nearly all of them, as we have done on many other occasions.

Q. And I presume that at the time you had pretty clearly in mind just what made a man valuable or not valuable to the company?

A. In deed, yes.

Q. And was Mr. Jorgensen aware of your feelings in that connection?

A. We had discussed it.

Q. And I presume that you discussed that afternoon likewise, or at least the matter came up during the course of your discussion?

A. The specific thing that makes a man satisfactory did not come up exactly; no; not in that light.

Q. But at previous conversations you had made clear to Mr. Jorgensen, I presume, just what features about an operator made him, in your eyes, valuable or not valuable to the company?

A. No. Mr. Jorgensen makes up his own mind on those matters.

Examination by Trial Examiner EICKHOFF:

Q. Did you exchange your views with respect to the qualifications of these men?

A. Exchange views—no; I wouldn't say that.

Q. Did you comment on their qualifications in the presence 1888 of Mr. Jorgensen?

A. No; I asked Mr. Jorgensen to comment.

Q. What do you mean, "we discussed"?

A. Well, it was an informal talk. I mean I called Mr. Jorgensen in and told him about men coming out from New York, and I remember at one point in the conversation I said, "If all of our men come back to work, we are going to have too many men around here."

Q. I understood you to say that you and Jorgensen had talked over the operators in the office, or nearly all of them.

A. On Monday?

Q. Yes.

A. That is true.

Q. Well, was this an entirely one-sided conversation?

A. Oh, no; not entirely. I wouldn't say that. I was just leading up to that. You see, I said that the men coming out from New York, and the men here from Los Angeles, not knowing exactly at that time how many would stay from New York or how many from Los Angeles, but knowing that all of them could stay if they so desired, it was apparent that if every man came back to work we would have—that is, we would be overstaffed. But we did have a discussion. I cannot remember the exact nature, the exact words, as to what would be done in such a case.

1889 I said, "Jorgensen, in such a case we will first take back the men that are most desirable, or most satisfactory to the company."

Does that answer your question?

By Mr. EDISES:

Q. Did that terminate the conversation? I presume something further was said.

A. I don't want to go on talking but——

By Trial Examiner EICKHOFF:

Q. What about talking over the men in the office?

A. As we have done on various occasions, by just——

Q. (Interrupting.) I mean on this afternoon.

A. Talking over the men in the office—many of the men in the H. B. operating room were mentioned by name, and their various qualifications were gone over as to first class operators, second class operators, and then their general satisfaction to the company; and then things in addition to their operating ability, such as disregard of orders, and that was considered in a man's qualifications or overall general satisfaction.

No specific conclusions were reached at that time. We didn't get any idea of what was going to happen in the future.

By Mr. EDISES:

Q. You, however, discussed the matter pretty thoroughly, I presume?

A. Fairly so.

1890 Q. How long did this conversation last?

A. I don't recall.

Q. An hour or so?

A. I think we talked over everything in general perhaps an hour.

Q. And although no specific conclusion was reached as a result of that conversation, nevertheless I presume that you and Mr. Jorgensen had a pretty clear idea of who was and who was not desirable to the company. Am I correct?

A. I did not have a clear view of all of the operators most desirable to the company. Mr. Jorgensen did. What I wanted to convey to

Mr. Jorgensen, and did, was that in taking back the men, if they came back to work, that we would give a lot of thought to their overall qualifications, overall satisfaction, satisfactory service with the company. I am sure he understood me.

Q. And you testified that you thought Mr. Jorgensen's activities in connection with getting the men back to work constituted a good job. Do you still think so?

A. His activities—well, I said I think he did a good job.

Q. Do you still think so?

A. Yes.

Q. You testified that you first heard of the meeting in the Postal clock room on October 10th at around 3 p. m. Is that
1891 correct?

A. I don't think I said October 10th, but if that is the day the clock room meeting was held, it was about 3 o'clock on the same day.

Q. And the meeting was held at what time?

A. I don't recall. I think it was around 4 o'clock.

Q. From whom did you learn about the meeting?

A. I learned about that from Mr. McDonough.

Q. Mr. McDonough?

A. Yes.

Q. Will you relate the conversation that took place at the time you learned about it?

A. As a matter of fact, Mr. Jorgensen came in to give me a report on the solicitation activities, and just as he was leaving the office he said, "By the way, have you heard that the men are going to have a meeting today?"

I said, "No; I haven't heard about it."

He said, "They are getting together today to have a little talk." Then he said, "You haven't any objection to that, have you?"

I said, "No, certainly not."

That is all.

Q. He told you, I suppose, where it was going to be held?

A. No. No mention was made of the clock room at that time.
1892 I don't believe they knew. No mention was made of the clock room. In fact, I never heard it called the clock room until recently.

Q. Did Mr. Hodges speak to you about this meeting before it was called?

A. No.

Q. Have you ever been told by Mr. Hodges, subsequently, as to whether or not he was asked for the Postal clock room?

A. Subsequently? Yes.

Q. How did that conversation come up?

A. I don't know.

Q. Do you remember what he said at the time?

A. No; I don't. It was an insignificant matter and I paid no attention to it.

Q. Did Mr. McDonough tell you what the purpose of the meeting in the Postal clock room was to be?

A. No. He mentioned no purpose except the men were going to have a meeting to get together and talk things over. He didn't give me any specific purpose.

Q. Well, weren't you curious as to what this get-together was about?

A. Well, if I had been curious I had no time then to investigate. I was too busy.

Q. In other words, Mr. McDonough simply told you that the men were going to have a meeting, and you said "O. K."?

A. Not exactly that. Just as he was going out of the
1893 office he said, "By the way"——

Mr. LIVINGSTON. (Interrupting.) I object to the conversation being repeated.

Mr. EDISES. Perhaps he is going to add something here.

The WITNESS. Just the same as I just mentioned a moment ago. That is, on the way out of the office he said, "By the way, have you heard that the"——

Mr. LIVINGSTON. (Interrupting.) I object, Mr. Examiner, as that is the same conversation.

Trial Examiner EICKHOFF. Overruled.

A. (Continuing.) The conversation was just as I have testified to here a moment ago.

By Mr. EDISES:

Q. Now, was that a common practice of yours, granting men permission to hold meetings when they came up to you and told you that they decided to do so?

A. It would always be granted, but, as a matter of fact, it is not necessary for them to come to me to get permission to hold a meeting.

Q. Even though the men have to leave their jobs in order to attend the meeting?

A. It wouldn't be necessary for them to come to me; no.

Q. Even though they left their posts, is that right?

A. Sure, I don't know when they are at their posts and when they are not. I don't control that.

Q. You had a good deal of confidence in Mr. McDonough's
1894 judgment anyway, didn't you?

A. In his judgment as a commercial man.

Q. Generally.

A. I wouldn't say generally; as a good commercial man, a good operator, and a good commercial man.

Q. When did you first see or hear about this round robin?

A. I don't remember; within two weeks after the strike.

Q. And who told you about it?

A. Nobody told me about it. It was delivered to me, and put on my desk. Captain Dodd delivered it to me, or left it on my desk in an envelope, I don't recall which, like any other peice of mail.

Q. You now recollect the occasion when you first saw it?

A. I remember exactly when I first saw it, but I couldn't give you the date and specify the exact time and date. It was within two weeks after the strike. I am pretty sure of that.

Q. And I notice that it is stamped October 17, 1935. Do you know how that date got on there?

A. Stamped where?

Q. At the top.

A. October 17—no, I don't know a thing about it. I don't recall whether the date was on there when I saw that thing or not.

Trial Examiner EICKHOFF. That is exhibit number what?

1895 Mr. EDISES. Board's Exhibit No. 13.

By Mr. EDISES:

Q. I take it that you approved of the action of the men in circulating this round robin, is that correct?

A. Approved of the action of the men?

Q. Yes; in circulating it around.

A. It wasn't a case of approval. It was a case of respecting their wishes.

Q. And you had no particular feelings on the subject one way or the other, although the round robin stated that the men renounced the ARTA as their bargaining representatives, is that true?

A. That is what it stated; yes.

Q. You approved of the idea, didn't you?

A. I respected the men's wishes.

Q. And was that what led you to write this letter, Respondent's Exhibit No. 9?

A. This is an acknowledgement of their notice and expresses my position.

Q. And you ordered this posted on the bulletin board?

A. Correct.

Q. Mr. Rodman, I believe you testified that at Los Angeles one man out of 40 walked out; is that correct?

A. I didn't testify to that specifically. I testified that one man walked out.

1896 Q. Well, you mean to say that you are not certain of that?

A. I certainly am. One man out of the total complement down there walked out.

Q. And no others walked out?

A. No others went on strike in Los Angeles.

Q. So there was no reason whatever why business should not have gone on as usual, is that correct?

Mr. MERRICK. In Los Angeles?

By Mr. EDISES:

Q. In Los Angeles.

A. Well, in Los Angeles?

Q. Yes.

A. Business went on as usual in Los Angeles.

Q. Was the office closed down at all?

A. No.

Q. Was there any diminution of services at all?

A. In Los Angeles?

Q. Yes.

A. With respect to service in San Francisco; yes.

Trial Examiner EICKHOFF. Now, where are we getting on this?

Mr. EDISES. I want to check his statement that Los Angeles was not affected by the strike. I want to direct my questions particularly to how they could spare—how many men was it?

The WITNESS. Seven.

1897 Mr. EDISES. Seven men and what were the circumstances under which those seven men came to San Francisco.

The WITNESS. They volunteered to come.

By Mr. EDISES:

Q. Do you know if any kind of pressure was put on them?

A. No pressure; they were tickled to death to come.

Q. You don't know the statement which has been made to the effect that the only reason those men came was because they were told if they did not come to San Francisco and act as strike breakers, the Los Angeles office would be closed down?

A. No such statement was ever authorized, to the best of my knowledge, and never made.

Q. Was any similar statement made?

A. That goes for any similar statement.

Mr. MERRICK. Thanks, Mr. Edises. I forgot that.

Mr. EDISES. I am just reciprocating for what your witnesses did for me.

Mr. MERRICK. Then everybody is happy.

By Mr. EDISES:

Q. Now, in regard to the information that Mr. Stone gave you as to what was happening in the various Eastern stations. You stated that you were to use that information to inform your own people, is that correct?

A. Yes; each district manager.

Q. Did your own people include those employes who were

1898 then out on strike?

A. It could include anybody that had contact with our managers.

Trial Examiner EICKHOFF. What difference does that make, Mr. Edises?

Mr. EDISES. It has a bearing on it.

Trial Examiner EICKHOFF. What if the company did put out propaganda, if it is not shown to be false propaganda; even then, what difference does it make?

Mr. EDISES. I had no idea there was any inference in the record, or any implication that that information was propaganda, but if it is clear, I shan't ask any further questions.

Trial Examiner EICKHOFF. I didn't say it was clear, but suppose it were.

Mr. LIVINGSTON. Surely it isn't against the Act to tell the truth, is it?

Mr. EDISES. That is what we are interested in finding out.

By Mr. EDISES:

Q. You stated that certain of the reports which were given you by Mr. Stone turned out to be accurate. I believe you stated that all of them turned out to be accurate, is that correct?

A. I wouldn't put it exactly that way. I wouldn't say
1899 "turned out to be accurate." I considered them accurate from the start. What I meant, and what I explained before, was that Mr. Stone's report checked approximately with a published report by Mr. Salisbury as to the number of men that had returned to work in M. K.

Q. As far as you know, the information that was sent by Mr. Salisbury was correct, is that true?

A. I am speaking of his published article that I saw some time later.

Q. And the published article corresponded with the information you got from Mr. Stone?

Mr. LIVINGSTON. As far as figures are concerned.

A. Approximately, yes; as far as M. K. New York was concerned.

By Mr. EDISES:

Q. Did you yourself ever check up afterwards on the accuracy of the statements and the report made by Mr. Stone?

A. Of course not.

Q. Do you remember on Sunday afternoon, October 6th, during the strike, meeting or coming across Mr. Bash and one or two others on the picket line and having a conversation with them?

A. Yes.

Q. Do you recall what was said at that time?

A. Some things I recall very pointedly, yes.

Q. What was it?

1900 A. It was during that meeting—it wasn't a meeting—during that conversation that Mr. York informed me that we would have to sign the agreement by Tuesday morning because they had been informed by ARTA in New York the Postal Telegraph Company was going on strike on Monday, and they would tie up the whole international system and there wouldn't be any question about having a signed agreement by Tuesday morning.

I said, "Mr. York, that is ridiculous."

Q. Do you remember anything further?

A. And they stuck to the point; they believed it. It was so ridiculous to me, it was apparent—well, I will leave that out.

Q. Was anything further said at that time, Mr. Rodman?

A. Pardon?

Q. Was there anything further said at the time of that conversation?

A. Yes. Mr. York went on to attack Mr. Stone personally. He called him a few names, and things like that. I assured him he was wrong.

Q. You each took sides, I presume, and you got rather hot-headed.

A. Oh, no, not at all. No one was hot-headed. The men behaved themselves very well. They perhaps had a couple of drinks. Later on they confessed to it.

1901 Q. Just a moment, Mr. Rodman. Confine yourself now to the conversation on Sunday, October 6th.

A. Yes.

Q. Mr. York condemned Mr. Stone in measured terms and without any heat on his part?

A. With no reservation, that is true.

Q. And you, in turn, without any fire in your voice, stated that Mr. York was wrong in regard to the things he said concerning Mr. Stone, is that correct?

A. That is true.

Q. And there was no flare-up on either side?

A. I think Mr. York was a bit exercised, but not unduly so.

Q. And you, however, remained perfectly cool, I take it?

A. Oh, yes.

Q. Don't you remember, in parting, making the statement, "Well let me tell you, there are some of you fellows who are never going to get back to Mackay?"

A. I made no such statement.

Q. What statement did you make along those lines?

A. None.

Mr. LIVINGSTON. He said he made no such statement.

By Mr. EDISES:

Q. Was anything at all said during that conversation as to whether or not certain of the men would be re-employed?

1902 A. I don't remember a single word on that subject during that talk.

Q. Do you remember saying anything of the sort at a different time?

A. No.

Mr. MERRICK. I think that is too large a question to expect a very accurate answer to.

Mr. EDISES. No larger than that last dozen of yours.

Trial Examiner EICKHOFF. No; that is true.

By Mr. EDISES:

Q. Did you ever have any labor troubles at Mackay Radio before ARTA became in the picture?

A. Before ARTA came into the picture?

Q. Yes.

A. Oh, from time to time you always have little disputes that you might call labor troubles.

Q. But your real grief dates from the entry of ARTA, I take it?

A. I don't know how to answer that question exactly. It is perhaps the most serious disturbance we ever experienced; the most serious demands ever made upon the company, when the so-called agreement was presented to our New York office.

Q. And that was done by ARTA, was it not?

A. Yes.

Q. So that you identify your real labor difficulties with the existence of the ARTA as a labor organization?

1903 A. Not entirely.

Q. Well, then——

Trial Examiner EICKHOFF. Mr. Edises, I don't like to interfere with you, but this is repetition. The record speaks on a lot of these things.

Mr. EDISES. If we can get a clear statement from the witness as to what he really believes, I think it will clarify the record considerably.

Mr. LIVINGSTON. If there is any suggestion that he refused to give a clear statement, I, for one, resent it.

By Mr. EDISES:

Q. Can you answer the question that I just put to you, Mr. Rodman?

A. Yes; the reason is obvious—only a small number of our men belong to ARTA.

Q. Do you know how many men belonged to ARTA prior to the strike?

A. Not exactly, but I have reports from Los Angeles that no one there belongs.

Q. I am speaking now of San Francisco.

A. Oh, well—I think in terms of the Pacific Coast.

Q. Confining yourself to the San Francisco situation, it is a fact that practically every operator in the H. B. office was a member of ARTA, isn't that true?

A. I don't know.

Q. Is it your position that the reason that these five
1904 men, Loudermilk, Rone, Bash, Palmer, and Phelps, were not taken back to work is because they did not apply in time?

A. That is exactly what happened; yes, that is my position.

Q. And if they had applied earlier, they would have gotten their jobs back?

A. On a temporary basis.

Q. On a temporary basis?

A. Exactly.

Q. What do you mean by that?

A. I mean that applications would have been taken from them, and they wouldn't have been confirmed in those ratings until after their record had been reviewed by all of us, including Mr. Stone.

Examination by Trial Examiner EICKHOFF:

Q. Mr. Rodman, certain men on the list were taken back and immediately confirmed, weren't they?

A. They weren't confirmed immediately.

Q. Over the telephone?

A. That was twelve hours or so after they were taken back.

Q. That is what I mean.

A. That is true, yes; that is, secured confirmation immediately.

By Mr. EDISES:

Q. Immediately?

1905 A. No; about twelve hours.

By Trial Examiner EICKHOFF:

Q. They were on a temporary basis for about 12 hours only?

A. That is true; the group, all of the men who came back to work during the day, up until all the jobs had been filled up.

1906 Q. Now, did you consider that when Mr. Palmer and Mr. Loudermilk interviewed you on Tuesday that they were seeking their jobs back, weren't they?

A. That is the first question they asked me when they stuck their heads in the door.

Q. That was about five o'clock?

A. 6:45 in the evening—about that.

Q. That was their first application for their jobs?

A. As far as I can remember, that is the first I had seen of them personally.

Q. And in the case of Mr. Phelps, do you know when he first reapplied?

A. I know, because his application passed over my desk, that it read 3:15 p. m., on the 8th.

Q. When did it come to your desk, that application?

A. I don't recall. It may have been that day or the following morning, I don't recall.

Q. It wouldn't have been more than a day or so later?

A. Oh, no.

Q. And shortly after that you found out, did you not, that Phelps had really applied for his position earlier, is that true?

A. I found out no such thing.

Q. Isn't it a fact that Mr. Dewey wrote to you and stated that Phelps had applied at the F. X. office, around 7:30,

1907 Tuesday morning?

A. That meant absolutely nothing——

Mr. MERRICK. (Interrupting.) Just answer the question will you, Mr. Rodman?

By Mr. EDISES:

Q. You knew that?

Trial Examiner EICKHOFF. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

A. Tuesday morning. No; the reply from Mr. Dewey didn't state that.

By Mr. EDISES:

Q. Well, didn't he state that Phelps had applied during the morning of October 8th?

A. Nope.

Q. I show you Board's Exhibit No. 8, consisting of a letter from Mr. Dewey to Mr. Rodman, and ask you if you have ever seen this before.

A. This is a file copy.

Q. Will you answer my question?

A. Well, you mean the day I received the original?

Mr. LIVINGSTON. He means, have you seen that before?

By Mr. EDISES:

Q. Have you seen the original?

Mr. MERRICK. Answer the question, Mr. Rodman. Have you ever seen that particular document? Answer the question, since he wants to insist upon it.

1908 By Mr. EDISES:

Q. Have you ever seen the original?

The WITNESS. Let me read it.

(Witness examines document.)

A. I remember seeing the original of that letter.

Mr. LIVINGSTON. Let me see it.

By Mr. EDISES:

Q. Do you now wish to change your testimony in any way in regard to the time Mr. Phelps re-applied for work?

A. Not at all. That merely says, "Mr. Phelps made several efforts" to see Mr. Dewey in the morning.

Q. You don't consider that he was applying for work, at this time?

Mr. LIVINGSTON. We will object to the question first, upon the grounds that it is highly misleading. I would like to ask the Examiner to take a look at that first paragraph and see if it is a proper question.

Will you kindly let the Examiner see the contents of that memorandum?

Mr. EDISES. Surely.

(Trial Examiner Eickhoff examines document.)

Trial Examiner EICKHOFF. Well——

By Mr. EDISES:

Q. Do you have any reason to doubt the statement of Mr. Dewey that Phelps had applied in the morning of Tuesday, October 8th?

Mr. LIVINGSTON. That is objected to on the grounds that
1909 it is an absolutely fallacious and false assumption of what Mr. Dewey said in that letter. That is precisely what he didn't say.

Trial Examiner EICKHOFF. Sustained.

Now, the exhibit speaks for itself. You have the witness' testimony. If you want to——

By Mr. EDISES:

Q. This letter from Mr. Dewey was a recommendation that the time element in Mr. Phelps' application be advanced to early in the morning of October 8th, was it not?

Mr. LIVINGSTON. That is objected to on the grounds stated by the Examiner—it speaks for itself.

Trial Examiner EICKHOFF. Sustained. If you want to ask the witness what interpretation he puts on the letter, why, you may.

Mr. EDISES. All right.

By Mr. EDISES:

Q. How did you interpret this letter when you saw it?

A. I interpreted just what it says. The letter was withdrawn by Mr. Dewey.

Q. Under what circumstances was it withdrawn?

A. Sent for it when I received Phelps' application back again. There was no letter attached to it.

Q. Did he say why he was withdrawing it?

A. Yes.

1910 Q. What was the reason?

A. It was a doubtful—there was a doubtful point.

Q. There was what?

A. A doubtful point.

Q. What doubtful point?

A. He mentioned it on the telephone. I didn't ask him.

Q. What did he refer to? Was he referring to the time?

A. He didn't say anything.

I said "All right, I will send it back to you as soon as possible. I want to get it to New York."

Trial Examiner EICKHOFF. About how much more, Mr. Edises?

Mr. EDISES. I am practically through, Mr. Examiner.

Trial Examiner EICKHOFF. Five minutes?

Mr. EDISES. About five minutes.

By Mr. EDISES:

Q. Can you identify that letter, Mr. Rodman? [Handing document to witness.]

Trial Examiner EICKHOFF. Is that in evidence?

Mr. EDISES. No.

A. Yes.

Mr. EDISES. I wish to offer this in evidence as the Board's exhibit.

Trial Examiner EICKHOFF. Any objection?

Mr. LIVINGSTON. Certainly not.

1911 Mr. MERRICK. A nice self-serving declaration, as I see it.

Trial Examiner EICKHOFF. It may be admitted as Board's Exhibit No. 22.

(The document referred to, a letter consisting of two pages, was received in evidence and marked "Board's Exhibit No. 22 Witness Rodman.")

By Mr. EDISES:

Q. Are there any other manual operators in San Francisco besides the operator at the F. X. office in the Mackay system?

A. Manual radio operator?

Q. Manual operators, yes.

A. We have no other manual radio circuits.

Q. Other than the one at F. X.?

A. That is true.

Mr. MERRICK. Did you make it clear, Mr. Edises, you are talking about San Francisco?

Mr. EDISES. I think my question made it clear.

Mr. LIVINGSTON. Let's have the question, please.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. MERRICK. That is what misled me, adding in the "Mackay system." I didn't know the purpose of that.

By Mr. EDISES:

Q. As a result of your negotiations with ARTA at various times, I presume that you became fairly familiar with whom were the
1912 most active members of the union, and who were its leaders, is that correct?

A. I had no negotiations with ARTA except in 1934, when Mr. Mathison was still the secretary.

Q. Were you present at the conference in September 1935, when Mr. Stone interviewed the marine men?

A. Yes.

Q. And also the point to point men?

A. Yes.

Q. Do you recall who was present at that conference?

A. Yes; I do.

Q. Likewise, you were aware of the members of the administrative committee, were you not, of ARTA?

A. No.

Q. You knew who was on the Relations Committee?

A. Yes; I had been informed of that.

Trial Examiner EICKHOFF. Anything further?

Mr. EDISES. That is all.

Trial Examiner EICKHOFF. We will take a five minute recess.

(At this point a recess was taken after which proceedings were resumed as follows):

Trial Examiner EICKHOFF. Any redirect?

Mr. EDISES. Mr. Examiner, I have one further question, perhaps two, that I would like to ask Mr. Rodman, if I may.

Trial Examiner EICKHOFF. All right.

1913 By Mr. EDISES:

Q. I show you the Board's exhibit No. 21. I ask you if you have ever seen this, or the original of it before.

A. (Examining document.) Yes.

Q. And what were the circumstances under which this document was prepared?

A. You mean under which——

Q. (Interrupting.) For what purpose was it prepared?

A. To get the answers to those questions.

Q. In other words, to determine whether or not you desired to re-employ Mr. Salisbury?

A. No; to get the answers to those questions.

Q. What did you want the answers to the questions for?

A. I was asked to get them.

Q. By whom?

A. By our New York office.

Q. It is a fact that Mr. Merrick prepared the questions, did he?

A. I didn't know it at the time. He told that in the court room.

Q. Don't you know what the object of preparing that series of questions was?

A. Yes.

Q. Do you know why you wanted the information from Mr. Salisbury?

1914 A. To get a clear statement from Mr. Salisbury, the answers to these questions, representing various angles.

Q. With a view to determining whether you wanted to re-employ him, isn't it right?

Mr. LIVINGSTON. Wait a moment!

A. No.

Mr. LIVINGSTON. Don't talk to him like that, or get over there where you belong.

Mr. EDISES. I will not assault him, but I will ask him what I want.

Mr. LIVINGSTON. You won't if I can stop it, I will tell you that.

The WITNESS. The answer is "No"—that is, to the question "Isn't it right?"

By Mr. EDISES:

Q. Then, what were these questions prepared for?

A. The questions——

Q. (Interrupting.) Did you just do it for fun?

Mr. MERRICK. He didn't prepare it. He testified that. I will tell you if you want to put me on the stand.

Mr. EDISES. I don't want to put you on the stand. You stay where you are.

A. Mr. Stone read a letter, which is already mentioned here, quoted in part by Captain Dodd, better than I can remember
1915 it: Simply to get the answers to those questions specifically without any prejudice of any kind, prior to the time that Mr. Salisbury's leave of absence expired.

Q. So that you would be able to know whether you wanted to take him back to the company, isn't that right?

Mr. LIVINGSTON. Objected to as having been asked and answered twice, just that question.

Trial Examiner EICKHOFF. Maybe the witness has told all he knows about it; maybe he hasn't.

Mr. LIVINGSTON. Well, he has answered that question twice.

Mr. EDISES. Will you read the question again, Mr. Reporter? And I suggest that the witness be given an opportunity to express himself freely on this subject.

Mr. LIVINGSTON. That is a great idea, but I am not going to stay here all night. This question has been asked three times.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. MERRICK. I think you ought to explain whom you mean by "you"—Mr. Rodman, the company, or Mr. Stone.

By Mr. EDISES:

Q. Either the company, Mr. Stone, or yourself.

A. I didn't originate the idea.

Q. You are not answering my question, Mr. Rodman.

1916 Examination by Trial Examiner EICKHOFF:

Q. Did Mr. Stone communicate anything to you which indicated why he was interested in this questionnaire, and the answers to it?

A. Yes; the letter of transmittal that came along with the questionnaire directed us to take this matter up with Mr. Salisbury to get the answers to these questions; and assure Mr. Salisbury that it would be entirely without prejudice—the thing would be entirely fair, but we wanted to know where he stood on those questions. Mr. Stone desired to know where he stood on those questions.

I wasn't passing on the matter.

Q. With respect to his employment?

A. With respect to the continuation of his employment after he returned from leave of absence.

By Mr. EDISES:

Q. And Mr. Salisbury, at a conference with one of your officials, answered the questions, is that right?

A. That is true.

Q. The questions that were put to him?

A. That is true.

Q. This document is a stenographic reproduction of his answers, is that correct?

A. That is true.

Q. And after the questions had been asked and answered, I
1917 presume that you sent a copy of this to Mr. Stone?

A. Oh, yes.

Q. And then did Mr. Stone give you a reply of any kind?

A. No; I had no further information from Mr. Stone.

Q. It is a fact, is it not, that after these questions had been put to Mr. Salisbury you decided not to re-employ him, is that true?

A. No.

Q. When did you decide not to re-employ him?

Mr. MERRICK. Mr. Examiner, I want to make the point again, that this is not one of the questions at issue in this proceeding. I understood this was originally——

Trial Examiner EICKHOFF. (Interrupting:) I think you have pursued this as far as you can legitimately unless Mr. Salisbury's case is in issue here.

Mr. EDISES. Mr. Examiner, haven't we been permitted to ask questions in regard to the circumstances of re-employment of the other men on the list, regardless of whether they are at work or not?

Trial Examiner EICKHOFF. Yes; on your direct case.

Mr. EDISES. Well, I believe the questions that Mr. Merrick put to this witness at the terminaton of his case not only embraced the men who were not taken back to work, but also all of the others on the list. Moreover, they actually applied to every other
1918 employee of the company. Surely, I am not exceeding the scope of proper cross examination when I try to bring out the bearing of this series of questions on Mr. Salisbury's failure to be re-employed.

Trial Examiner EICKHOFF. Ask him whether or not the answers of Salisbury had anything to do with his termination of employment.

Mr. EDISES. Will you answer the Examiner's question?

The WITNESS. What was the question?

Mr. EDISES. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. LIVINGSTON. We will object to the question on the grounds it is cross examination on a collateral issue; therefore improper.

Trial Examiner EICKHOFF. Overruled.

By Mr. EDISES:

Q. Will you answer the Examiner's question?

A. Well, let me se, just what was the specific question? No, when the decision was made——

Mr. LIVINGSTON. The answer is "No."

Mr. EDISES. Just a minute! Let him explain his answer, Mr. Livingston.

Trial Examiner EICKHOFF. Do you want to explain your answer?

The WITNESS. I want to explain why this document had nothing to do with the decision, because I made the decision
1919 myself, made the recommendations myself just one day prior to the time Mr. Salisbury was due to come back, and I didn't even review those answers.

Trial Examiner EICKHOFF. Let's have the story now.

By Mr. EDISES:

Q. You have now stated all of the circumstances concerning the part you played in connection with these questions and answers?

A. Yes.

Q. Is it your position; in other words, that this series of very pointed questions dealing with Mr. Salisbury's union activities——

Mr. LIVINGSTON. I don't subscribe to that characterization of those questions. They speak for themselves.

Mr. EDISES. They certainly do. Do you feel that my characterization is an inaccurate one?

Mr. LIVINGSTON. I don't think loyalty and attention to the interests of the company necessarily involve not belonging to a union. I think a man can be loyal and belong to a union—that is the first question. I think whether a company is fair and unjust to its employees is not necessarily tied up with whether a man belongs to a union or not.

Mr. EDISES. Likewise, the questions in regard to whether or not he was returned to active duty, would he either actively support the boycott or actively oppose it and work for its withdrawal——
1920 Mr. LIVINGSTON. (Interrupting.) I don't think that has to do with his withdrawal. I expect a man who works for me not to tell my customers to go away.

Mr. MERRICK. I asked the same questions on cross examination of the others, Mr. Edises.

By Mr. EDISES:

Q. Is it your understanding, Mr. Rodman—let me put it this way: Have you any knowledge whether, from your discussions with Mr. Stone or discussions with any other company official, as to the connection of this series of questions and answers with re-employment of Mr. Salisbury, or do you take the position that it was simply an idle gesture made out of the company's general quest for knowledge?

Mr. LIVINGSTON. Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

A. I made my recommendation to Mr. Stone. He may have considered these questions.

Q. Oh, I see. In other words, Mr. Stone was the person who finally passed on the question of Mr. Salisbury's re-employment, is that correct?

A. Of course.

Q. At that time he had a copy of these questions and answers?

A. That is right.

Trial Examiner EICKHOFF. Are you through, Mr. Edises?

1921 Mr. EDISES. I think that is all, Mr. Examiner.

Trial Examiner EICKHOFF. Any redirect?

Redirect examination by Mr. MERRICK:

Q. Did you attempt in any way to avoid or postpone meeting with Mr. Loudermilk and Mr. Palmer on the afternoon of Tuesday, October 7th, did you?

A. Only because I was busy at the time they first called—at 6:15 p. m., approximately 6:15.

Q. Did you try not to see them at all?

A. I didn't try not to see them, I simply couldn't see them at the time.

Q. Did you know that they were going to return later, or that they were waiting to see you?

A. I knew that they were not waiting because Miss O'Connor subsequently informed me they talked together for a few minutes, then left.

Q. Were you hurrying home that night for the purpose of avoiding them?

A. Absolutely no; no such purpose. In fact, I was delayed at the office later than usual, getting away about 6:45, when I accidently met them.

Q. Had you any reason to believe, after the information you had given Miss O'Connor earlier, that they were going to return?

1922 A. No reason whatsoever to believe that they would return; no.

Q. Did you attempt in any way to avoid seeing Mr. Phelps on that same day, Tuesday, October 7th?

A. On that same day to avoid seeing him?

Q. Yes.

A. Well, I couldn't see him.

Q. I asked you whether you attempted to avoid seeing him.

A. The answer to that question would have to be "No."

Mr. MERRICK. Don't be so reluctant about it. [Laughter.]

By Mr. MERRICK:

Q. Did Mr. Dewey, so far as you know, in any way attempt to avoid seeing Mr. Phelps or to postpone the time at which Mr. Phelps would be able to see him?

A. No; not to my knowledge.

Examination by Trial Examiner EICKHOFF:

Q. What do you mean, you couldn't see these men?

A. Just what I mean by that. These men do not normally report to me, and have very little contact with me directly to the nature of our organization. I was extremely busy that day with out-of-town

matters. I was in Captain Dodd's office at about 3 o'clock in the afternoon on the 8th, and Mr. Phelps opened the door unannounced, as I was walking out, and I put up my hands and said "I can't see you now! I can't see you now!"

1923 That is what I mean. There was no attempt to avoid seeing anyone.

Q. It seems to me that you sought to avoid them because you were too busy to see them. Wouldn't that be a better statement?

A. I had no particular reason. I was very busy on other matters, and Mr. Phelps should in normal course of events—should have taken all his problems up with Mr. Dewey. It was unusual for him to come in and try to handle them with me.

Q. I mean—You mean it was physically impossible for you to see them?

A. It was physically impossible to see them, due to long distance telephone calls. The volume of work at that time made it physically impossible.

By Mr. MERRICK:

Q. What I meant by the question, Mr. Rodman, was whether you were avoiding seeing them because they were the persons that they were?

A. No; absolutely not.

Q. Isn't it a fact that the only reason that you had for not seeing them was you had other work that you thought more pressing and required your attention at the time?

Mr. EDISES. I object to that as leading and suggestive.

Trial Examiner EICKHOFF. That is the kind of question I would like to ask him, to clear things up.

1924 A. The answer is "Yes."

By Mr. MERRICK:

Q. What was the out-of-town work that required your attention this afternoon? I think the Examiner may be interested——

Trial Examiner EICKHOFF. (Interrupting.) No, I am not interested; I am not interested.

Mr. MERRICK. O. K., I am not interested either.

That is all.

Trial Examiner EICKHOFF. No further questions?

Mr. EDISES. No.

Trial Examiner EICKHOFF. You may be excused, Mr. Rodman.

(Witness excused.)

Mr. MERRICK. Miss McKenna.

ALICE MCKENNA, called as a witness for the respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Direct examination by Mr. MERRICK:

Q. Give the reporter your name, please.

A. Alice McKenna.

Q. Are you an employee of Mackay Radio and Telegraph Company?

A. Yes, I am.

Q. How long have you been employed by that company?

A. Approximately?

Q. Approximately.

A. Approximately about a year and a half.

1925 Q. And you were in the employ of the company preceding the recent strike?

A. Yes, I was.

Q. Did you go out on strike?

A. No, I didn't.

Q. Do you remember any incident when you attempted to go up to the office of the company at 22 Battery street, when you were interfered with and prevented from going?

A. Yes, I do.

Q. Will you state as accurately the time—that is, the day and the time of day, and just recite what took place?

A. Well, I don't know right off hand exactly the date—it was the Sunday of the strike.

Q. I think that was October 6th?

A. I was to be at work at six o'clock in the evening and I got off the streetcar at First and Market street at a quarter to six. I got across the street on the corner of Market and Bush when Mr. Black walked up to me and said, "You better not go in there, because you are liable to get hurt."

And I said, "That is silly, I think I will."

I left him and went on a little farther and Mr. Rone and Mr. Clifford—and Mr. Rone and Mr. Clifford came up and spoke to me. They said, "You can't go over there."

I said, "I have to go to work. I am not on strike."

1926 They said, "Well, you will have to go with us."

Mr. Phelps came out at that time. They said, "You can't go over there."

They took me by the arm.

Q. Who did?

A. Mr. Rone. Then I walked—I said, "Well, I will have to phone."

He said, "There is no phone around there. You had better take a streetcar and go home."

I said, "The only fair thing to do is to phone the office and let them know I attempted to get to work anyway."

Mr. Clifford on one side, Rone on the other, and Mr. Phelps next, walked me down the street looking for a telephone.

Q. You say they walked you down the street? Did they—did they hold your arm, one on each side?

A. Yes, they did. I got down—I believe it was—I believe it was Front street on Market. I walked down there and so far I couldn't find any phone. All this time they were talking and they discussed the fact if it wasn't for the women they would win the strike, because, the women were the ones who were holding them back. I didn't say anything; I just kept walking.

All of a sudden Mr. Phelps grabbed hold of my arm 1927 and said, "Let's go down this way."

The street was dark; I was rather excited; I just didn't know what to think. I believe he had been drinking because I could smell alcohol.

I said, "No, I don't want to go down there. I want to get a telephone."

I pulled away and walked down the street a little farther until I came to Foster's restaurant and I said "I am going in here to phone."

I went in to phone and Mr. Rone and Mr. Clifford and Mr. Phelps stood by the phone and watched me while I phoned and said, "Don't tell them who we are."

Mr. Rone said "I guess you might as well tell them."

I said "I will."

I called up the office and Miss Cronkhite was on the board at the time.

She said "Mr. Rodman is busy on the phone but I will let you talk to him right away."

She asked me where I was. I told her the address and phone number and she said "Wait there!"

Q. What did you tell her over the telephone?

A. I said "The strikers are holding me down here. They won't let me in the building."

She said "Where are you?"

I gave her the address. She said "I will have you 1928 talk to Mr. Rodman."

I don't remember—there were two or three calls.

Trial Examiner EICKHOFF. Did you talk to Mr. Rodman?

The WITNESS. I don't know whether I did or not.

By Mr. MERRICK:

Q. Did you talk with anybody besides the girl at the switchboard? (No answer.)

Examination by Trial Examiner EICKHOFF:

By Trial Examiner EICKHOFF:

Q. Did you tell someone else in the office the same thing that you told the operator?

A. There was no one else in the office.

Q. At any rate you reported to the office that you were being held?

A. Yes.

Q. And where you were?

A. Yes.

Q. What the telephone number was?
A. Yes.
Q. Then did you leave the booth?
A. No. I stayed there for about 20 or 25 minutes.
Q. In the booth?
A. Yes.
Q. What happened after that, do you know?
A. Well, Mr. Rone and Mr. Phelps—Mr. Rone went and got a cup of coffee. Mr. Phelps and Mr. Clifford left, and a
1929 few of the strikers were in there. I just waited and I saw them go away outside, and I don't know—Well, I didn't know what to do. They were waiting—I don't know what they were waiting for—they were just waiting around there. I went outside and I saw some police cars come.

Incidentally I called my home at that time, and my uncle, a newspaper man was taking my grandmother to the ferry, I believe. He went and got some policemen. I went outside and told them my story. They said they would help me.

They said "We can't take you in the machine, but if anyone comes near you it will cause them some trouble."

I walked up the street; they followed me in the police car. I came to the front of the building, and they sent me upstairs.

Q. Is that the whole episode?
(No answer.)

By Mr. MERRICK:

Q. Was that all there was to it?
A. Yes.
Q. Did you report that incident subsequently to someone in the company?
A. As soon as I got upstairs Lieutenant—a lieutenant of the police sent me in to Mr. Rodman's office. Then he came in and questioned me.
Q. You told them the same story you have told here, the
1930 same story you have told here on the stand?
A. Yes.

Mr. MERRICK. That is all.
Trial Examiner EICKHOFF. Any cross examination?
Mr. EDISES. Yes.

Cross examination by Mr. EDISES:

Q. Who is Mr. Black?
A. He is Mr. Jorgensen's secretary.
Q. Mr. Jorgensen's secretary, is that right?
A. Yes.
Q. He is the one who told you, "You had better not go in; you are liable to be hurt?"
A. Yes.
Q. You are a pretty good friend of Mr. Rone's, aren't you?

A. Well, Mr. Rone and I are just co-workers. I know him just at work.

Q. You have always been friendly with him, haven't you?

A. Oh, yes.

Q. As a matter of fact you had a little conversation the day before about the question of the strike, and so on, going to work, didn't you?

A. Not that I can remember, because I didn't even know there was going to be a strike.

Q. Don't you remember any conversation with Mr. Rone the day before this took place?

1931 A. No; I don't believe I do.

Q. You don't believe so?

A. That was a Saturday.

Q. That was—Well, what was the date of this—Sunday evening?

A. Sunday evening.

Q. How about Saturday?

A. No; I don't believe I saw Mr. Rone on Saturday.

Q. How about Friday?

Mr. LIVINGSTON. That is objected to as improper cross examination, whether she had a conversation on Friday.

Mr. EDISES. We will see the bearing of it, Mr. Livingston.

Trial Examiner EICKHOFF. I will allow it.

By Mr. EDISES:

Q. How about Friday, Miss McKenna?

A. I didn't know there was to be a strike. If I spoke to Mr. Rone it was not on a strike matter, because when I came to work I was surprised there was a strike.

Q. On this occasion when Mr. Rone, Mr. Clifford, and Mr. Phelps met you, were they threatening in their manner?

A. Well, they weren't—In a way they were, and in a way they weren't.

Q. What do you mean by that? You mean, in other words, that it was a sort of joke, wasn't it?

A. No; the way they acted I knew they meant what they

1932 said, but they were trying to do it in a nice way. If I didn't agree with them, they would see to it that I would do it anyway.

Q. There was quite a bit of laughing. They smiled at you, you smiled at them?

A. I didn't smile. I was too nervous to smile.

Q. Is it possible that you could be mistaken about this alleged taking of your arm as they walked down the street?

A. No; I don't believe—I know I wasn't mistaken. They did have a hold of my arm at the time.

Q. Were they holding it loosely or very tightly?

A. Well, it was sometimes tightly, sometimes loosely.

Q. They sort of squeezed and then relaxed? [Laughter.]

Mr. MERRICK. If it would assist you in the cross examination, I would state that Miss McKenna has been called only as a rebuttal witness to rebut Mr. Phelps' testimony.

Examination by Trial Examiner EICKHOFF:

By Trial Examiner EICKHOFF:

Q. Was there any rough treatment?

A. Only in the incident when Mr. Phelps grabbed my arm and tried to take me down the street. Maybe I thought it was rough. I was rather excited at the time, but he——

Q. (Interrupting.) Started to lead you in a certain direction?

A. Yes; grabbed ahold of me, was going to take me down
1933 there.

By Mr. EDISES:

Q. Did anybody ever offer to strike you?

A. No; I don't believe so.

Q. They never threatened to strike you in any way?

A. No.

Q. As a matter of fact they were very polite at all times, weren't they? Weren't they polite, Miss McKenna?

Mr. LIVINGSTON. I would suggest that that was not a very polite thing to do—taking a strange lady down the street.

Trial Examiner EICKHOFF. We don't want your suggestions.

By Mr. EDISES:

Q. You said "Yes; they were"?

A. Well, Mr. Rone was very polite. Mr. Phelps was rather—I don't know what you would call it—but he wasn't quite as polite as Mr. Rone. Mr. Rone was trying to make me feel very much at home, but he made me understand he meant what he said.

Q. Mr. Clifford likewise was polite?

A. Well, yes.

Trial Examiner EICKHOFF. Any further questions?

Mr. EDISES. That is all.

Trial Examiner EICKHOFF. Any further witnesses?

Mr. MERRICK. I want to take three minutes. Mr. Jorgensen.
1934 Trial Examiner EICKHOFF. This witness need not be resworn, need he?

Mr. MERRICK. I don't require it.

Trial Examiner EICKHOFF. You are still under oath?

Mr. JORGENSEN. All right.

ANDREW JORGENSEN, recalled as a witness for the respondent, Mackay Radio and Telegraph Company, testified further as follows:

Direct examination by Mr. MERRICK:

Q. Mr. Jorgensen, in your previous testimony you referred to a request that you had received to have the round robin returned to the employees for further signatures. Do you recollect that?

A. Yes.
Q. Was that your own idea?
A. Receiving the request?
Q. No; having it sent back for further signatures.
A. Oh, no.
Q. Did you receive a request in writing from any employees?
A. Yes; I did. I received a note signed by three men.
Q. Is this the note that you received?
(Counsel Merrick hands witness note.)
A. That is right.
Mr. MERRICK. I offer this in evidence.
Trial Examiner EICKHOFF. Has counsel seen it?
1935 Mr. MERRICK. No.

By Mr. MERRICK:

Q. Is that the sole reason that you had for sending the petition back to the employees, in order to comply with their request that you had received from these three men?
A. Yes. I believe I mentioned that in my former testimony.
Trial Examiner EICKHOFF. Any objection, Mr. Edises?
Mr. EDISES. No objection.
Trial Examiner EICKHOFF. It may be admitted as respondent's Exhibit No. 14.
(The note referred to was received in evidence and marked "Respondent's Exhibit No. 14, Witness Jorgensen.")
Trial Examiner EICKHOFF. Will you ask him who the signatories are on it?

By Mr. MERRICK:

Q. Do you know the signatures on this slip of paper?
A. Three clerks.
Q. Three clerks employed in the H. B. office?
A. H. B. Office.
Mr. MERRICK. I put Mr. Jorgensen on the stand to testify to this principally because the Examiner seemed to be interested in it. I have a few other things in another matter, but I ask if you wish to question him any further in regard to this.
Trial Examiner EICKHOFF. No.
1936 Mr. EDISES. I think we will save some time if I stipulate that Mr. Jorgensen's answers to those questions will be the same as Mr. Rodman's.
Mr. MERRICK. I would be very delighted if that stipulation be entered into, if this witness be asked the same series of questions that were asked Mr. Rodman at the close of his direct examination, that this witness would answer in the same way that Mr. Rodman did.

By Mr. MERRICK:

Q. Did you hear the questions that I asked Mr. Rodman—a series of questions?

Trial Examiner EICKHOFF. The ones which he read?
A. I did.

By Mr. MERRICK:

Q. Would you answer in the same way to each of those questions that Mr. Rodman answered, if they were put to you individually?
A. I would.
Trial Examiner EICKHOFF. I think you might read the first and last questions, if you can.

By Mr. MERRICK:

Q. The first in the series of questions, I think, reads as follows:
"Did you at any time, or do you have any knowledge, of any incident when any other official of your company had any correspondence, conversation, or other communication of any character whatsoever with McDonough, wherein any activities of any
1937 kind or character by Mr. McDonough, or any other employee of the company, were discussed, projected, or suggested, whereby the activities of ARTA would be prevented, or in any manner interfered with."
And the last of that series of questions reads:
"Have you, or to your knowledge, has any officer of your company, ever interfered with, restrained, or coerced or attempted to interfere with, or restrain, or coerce any employees of your company in connection with their right of self-organization, and to form, join, or assist labor organizations of their own choosing, or to engage in any concerted activities through representatives of their own choosing."
Is that stipulated?
Trial Examiner EICKHOFF. Yes.
Mr. EDISES. Stipulated.
Mr. MERRICK. The respondent rests.
Trial Examiner EICKHOFF. Any further questions?
Mr. EDISES. I have no cross examination.
Trial Examiner EICKHOFF. Witness excused.
(Witness excused.)
Mr. EDISES. Mr. Rone.
Trial Examiner EICKHOFF. This is on rebuttal?
Mr. EDISES. Yes.

Mr. LIVINGSTON. Before you start your witness, I promise
1938 to give you an answer to a request for stipulation as to what happened to Mr. Mathison on the 3rd of December 1934. I will stipulate at that time there was considerable discussion at the meeting of various charges against Mr. Mathison, some of which, according to the minutes, the members thought substantiated and some of which was not; that Mr. Mathison resigned with a distinct understanding that his resignation—with distinct understanding that his resignation was not admission of guilt whatsoever, and that

his resignation was accepted by a vote of 18 to 2, out of a total membership of about 40 members.

Mr. EDISES. That stipulation is agreeable, Mr. Livingston.

Mr. Rone.

Trial Examiner EICKHOFF. You are still under oath.

L. N. RONE, called as a witness on rebuttal for the National Labor Relations Board, having been previously duly sworn, testified as follows:

Direct examination by Mr. EDISES:

Q. You heard the testimony of Miss McKenna?

A. Yes.

Q. Did you have any conversation with Miss McKenna on Saturday, October 5?

A. Yes.

Mr. LIVINGSTON. Objected; no proper foundation laid.

Mr. EDISES. First let me find if he had, then we will
1939 specify it.

By Mr. EDISES:

Q. Did you?

A. Yes.

Q. What was the time and place of that conversation?

A. Some time Saturday, I believe in the afternoon while I was on picket duty—Postal Telegraph Building.

Q. Can you relate what was said at that time?

Mr. LIVINGSTON. Objection; no proper foundation laid for impeachment.

Trial Examiner EICKHOFF. With respect to what?

Mr. EDISES. With respect to the connection, or part, if any, that Miss McKenna was to—might play in the strike or in connection with her going to work either that day or the following day.

Mr. LIVINGSTON. Objection; no proper foundation laid for impeachment.

Trial Examiner EICKHOFF. Overruled.

Mr. EDISES. Certainly she testified she didn't have any such conversation.

Mr. LIVINGSTON. Well, there is a way to impeach a witness.

Mr. EDISES. Let's get at it this way.

Mr. LIVINGSTON. Did you overrule the objection?

Trial Examiner EICKHOFF. Yes.

Mr. LIVINGSTON. May I be heard on the subject? This
1940 young lady has been on the stand. She is entitled to have her attention specifically called to the time, place, persons present, and the substance of the conversation, before anybody can say she has testified falsely. She is entitled to a square deal in this room as well as anyone.

Trial Examiner EICKHOFF. Do you prefer it that way?

Mr. LIVINGSTON. I insist on it that way.

Trial Examiner EICKHOFF. Let's ask Miss McKenna to resume the stand.

Mr. LIVINGSTON. Gladly.

ALICE MCKENNA, recalled as a witness for the respondent, Mackay Radio and Telegraph Company, resumed the stand and testified further as follows:

Mr. EDISES. Do you want the witness?

Mr. LIVINGSTON. No, I don't ask impeaching questions. Go on! Impeach!

Mr. EDISES. All right.

By Mr. EDISES:

Q. Miss McKenna you testified that you didn't have any conversation with Mr. Rone at all on Saturday, October 5, is that still your recollection?

Mr. LIVINGSTON. She testified she didn't remember any conversation, in the first place; second place, we object to the question as not in proper form for impeachment.

Trial Examiner EICKHOFF. I want to please you. How
1941 would you like the question asked?

Mr. LIVINGSTON. All right, I will tell you how the question has to be asked.

Mr. EDISES. I have no objection to your putting the question.

Mr. LIVINGSTON. I don't know what the conversation is. If you will tell me——

Trial Examiner EICKHOFF. What is the form you want such a question put?

Mr. LIVINGSTON. Was there a conversation at a specified time, specifying, and place, specifying, and following persons present, specifying, at which the following was said, specifying. That is the only way you can put an impeaching question on cross examination. That is the law of evidence.

Trial Examiner EICKHOFF. You might be surprised if I overruled it.

Mr. LIVINGSTON. I might be amazed.

Trial Examiner EICKHOFF. Have you any objection to following Mr. Livingston's form?

Mr. EDISES. None whatever, Mr. Examiner.

By Mr. EDISES:

Q. Miss McKenna, do you remember a conversation held on October 5, just outside the Mackay office some time in the afternoon, as you were leaving the office; at which time Mr. Rone was
1942 present, and possibly certain other pickets—were there any other pickets?

Mr. EDISES (turning to Counsel Livingston). Do you want any further circumstances other than the substance of the conversation?

Mr. LIVINGSTON. No, that is it, just what you said.

By Mr. EDISES:

Q. At which time there was some discussion in regard to the men on strike, the statement by you that you "envied them on strike," that you wished you didn't have to go to work yourself. Do you remember that conversation?

A. No, I don't.

Q. Do you remember any conversation—do you remember any conversation with Mr. Rone at all at the time and place just specified?

A. That was Saturday afternoon?

Q. Yes, as you were leaving the Mackay offices?

A. No, I don't believe I do.

Q. Do you remember seeing some men picketing that afternoon?

A. Yes.

Q. And do you recall whether Mr. Rone was among them?

A. No.

Q. You don't recall?

A. No.

Q. Do you recall speaking to anyone—any of the pickets, I mean—pickets then on duty?

1943 Mr. LIVINGSTON. That is objected to—improper impeachment.

By Mr. EDISES:

Q. At the time I have just indicated?

Mr. LIVINGSTON. That is objected to—not proper cross examination.

Trial Examiner EICKHOFF. Overruled.

Mr. MERRICK. Is the whole cross examination reopened now, do I understand——

Trial Examiner EICKHOFF (interrupting). No.

Mr. EDISES. I am just trying to get at that conversation.

Trial Examiner EICKHOFF. We want to give her every opportunity to remember or to dispute, any conversation at or about that time with Mr. Rone, or anybody else on the picket lines so there will be no question that she is taken by surprise.

Mr. LIVINGSTON. I don't mean to be understood as trying to give lessons in evidence, but the Examiner knows that there is only one question that can be asked Mr. Rone: "Did you have a conversation in which Miss McKenna said so and so," giving the same language. If he says "Yes" that is one thing; if he says "No" it is another—but that is the end of impeachment.

Trial Examiner EICKHOFF. That may not be the end of
1944 it here, because the rules of evidence do not control.

Mr. LIVINGSTON. The rules of fairness, if not justice——

Trial Examiner EICKHOFF. Just so long as there is no misunderstanding, nobody is taken by surprise, and the witness has the full opportunity to recall—that is all that is necessary here.

By Mr. EDISES:

Q. Do you remember any conversation with any of the pickets at that time and place, as you were leaving the office?

Mr. LIVINGSTON. Objected to unless the character of questions is specified.

Trial Examiner EICKHOFF. Overruled.

A. I really couldn't say at the time—everything is so muddled. I don't believe I spoke to anyone. I can't remember speaking to Mr. Rone.

By Mr. EDISES:

Q. Is your recollection of the incident in which Mr. Rone, Mr. Clifford, and Mr. Phelps escorted you down the street, about as clear as your recollection of the previous——

A. (Interrupting.) No, at the time—no, at that time I know what I was talking about, because that was impressed upon my mind because after all that was—I was rather excited, and Saturday afternoon there were very few pickets, if I can remember, because that was just at the time the strike was really starting.

1945 Q. Is it possible that Mr. Rone might have been there?

A. I couldn't really say who was there. I didn't pay much attention.

Trial Examiner EICKHOFF. That is sufficient.

Mr. EDISES. Thank you, Miss McKenna. Mr. Rone, please.

L. N. RONE, called as a witness on rebuttal for the National Labor Relations Board, having been previously duly sworn, further testified as follows:

Direct examination by Mr. EDISES:

Q. Mr. Rone, you heard the testimony of Miss McKenna, did you not?

A. Y[illegible]

Q. I asked her a question in regard to a conversation held with you on the afternoon of Saturday, October 5?

A. Yes.

Q. While you were on the picket line, and as she was leaving the Mackay office?

A. Yes.

Q. Do you recall having a conversation with Miss McKenna at that time?

A. Yes; I do.

Q. And who was there at the time of the conversation?

A. Well, I don't recall the names of the men. There were pickets around.

1946 Q. And you were acting as a strike captain at that time, were you not?

A. Yes.

Examination by Trial Examiner EICKHOFF:

Q. Did anyone else participate in the conversation?

A. There may have been. There was a distance of over 15 or 20 feet.

Q. You mean you and Miss McKenna were separated?

A. Yes. We hollered back and forth.

By Mr. EDISES:

Q. What was the subject of that conversation?

A. The start of the conversation, she says, "You lucky stiffs!" I said, "Why?" "You don't work." I said, "You shouldn't be working either; there is a strike on there." She says, "I am going to a party tonight, and I won't get home from work—I'll probably come to the party right from work. If I come down, will you stop me?" I said, "You bet your life." She says, "I will have an evening dress; you better stop me." I said "O. K."

1947 By Mr. EDISES:

Q. Anything further said?

A. Not that I recall. She was walking away slowly as this was going on.

Q. Did you see Miss McKenna the following day?

A. At four o'clock in the morning, it was just a joke passed between us.

Mr. MERRICK. Is this to complete the impeachment?

Mr. EDISES. Well, we are going——

Mr. MERRICK. (Interrupting.) You can't do it! You can't do it.

Mr. LIVINGSTON. You can do anything here.

Trial Examiner EICKHOFF. Do you still adhere to that statement, that you can do anything here?

Mr. LIVINGSTON. No; that goes too far. I believe you can do anything in the impeachment, as the Examiner has construed it.

Trial Examiner EICKHOFF. What is your further purpose?

Mr. EDISES. I would like to question Mr. Rone in regard to the incident that has been testified to.

Trial Examiner EICKHOFF. This is the first time Mr. Rone has been drawn into this thing, and I am going to hear his side of the story. I have heard the other side.

Mr. MERRICK. He mentioned it on his direct examination.

Trial Examiner EICKHOFF. I don't believe he did. Mr. Phelps did.

1948 By Mr. EDISES:

Q. Now, Mr. Rone, did you see Miss McKenna the following day?

A. Yes; about six o'clock Sunday evening.

Q. And who else was present at the time you saw her?

A. When I first saw her, Mr. Black was running across the street to intercept her. She was coming from a street car across Bush street.

Trial Examiner EICKHOFF. Wouldn't it speed this up, asking him to relate his version?

Have you any objection to this narrative?

Mr. MERRICK. My only objection is this, Mr. Examiner——

Trial Examiner EICKHOFF. (Interrupting.) Which is the objection you have already made?

Mr. MERRICK. I stated when I put Miss McKenna on the stand, I put her there for the sole purpose of rebutting Mr. Phelps' statement.

Trial Examiner EICKHOFF. She has mentioned other people.

Mr. MERRICK. The evidence in her testimony was not directed at any of the issues that involved Mr. Phelps or Clifford. It was simply addressed to the credibility of Mr. Phelps' own testimony. Her testimony has nothing to do with the credibility of Mr. Rone or the qualifications of their position.

Trial Examiner EICKHOFF. They are entitled to restore the credibility of Mr. Phelps.

1949 Mr. MERRICK. Then, if you are going to admit cumulative evidence, I will want to recall Mr. Dewey, the two policemen to show how many Miss McKenna has repeated the story to, if that kind of testimony will aid you in determining who was telling you the truth about the incident. The facts themselves are of no importance to either side. They are only introduced to show that Mr. Phelps had not testified correctly as to what he did.

Trial Examiner EICKHOFF. Well, if that testimony is under attack, the Board certainly has—is entitled to corroborate it. It will restore his credibility if it has been undermined. That is also a rule of evidence, if you want to go by the rules of evidence.

Will you briefly narrate this incident?

The WITNESS. Yes, when I first saw Miss McKenna she was crossing Bush street. Mr. Black rushed out and intercepted her. It was his first day on the picket lines. He was very enthusiastic about picket duty. He intercepted her, and I didn't hear what he said to her.

Mr. MERRICK. I object to anything except what he said and saw.

Trial Examiner EICKHOFF. Yes, don't characterize the witness' conduct, or why.

A. I saw him stop, and I walked out to see what it was all about. She said "Hello" to me.

1950 I said "Hello."

She bawled me out for not being there at four o'clock. She said she had to go to work with a green evening dress on at four o'clock in the morning, because I hadn't been there to stop her. I say now, and I believed them, it was kidding. We kidded a little bit.

She said "Well, what am I going to do now? I don't want to go to work but I will have to phone them if I don't."

Mr. Phelps and myself had already made plans to go to Alameda and talk to Mr. Buckley and Mr. Layman. We were headed for the

Ferry Building at the time we met Miss McKenna. I told her we would walk down if she wanted to phone. She said "O. K. by me".

We went down the street. As far as anyone holding on to her, Miss McKenna and Mr. Clifford held hands and skipped a good deal of the way. Outside of that I saw no one holding onto her.

When we arrived at the restaurant she became quite worried, and I really didn't know what to do about it myself; because there is a chance of being in a bad position, so I told her to tell them to tell the officials who were present, and that we had intercepted her and told her she shouldn't cross the picket line.

Then I said I had to catch a ferry for Oakland, and she could go on up and go to work, or stay here.

1951 I left. I didn't understand she stayed there until the police called for her.

Trial Examiner EICKHOFF. Any cross-examination?

Cross-examination by Mr. MERRICK:

Q. Did you hear Mr. Phelps' testimony?

A. No; I didn't.

Q. Anyone tell you as to what he testified?

Mr. EDISES. I object to that question.

Trial Examiner EICKHOFF. I will allow it.

A. They may, but I couldn't put my finger on it.

Q. Who may have told you?

A. In regard to those incidents?

Q. Yes.

A. No one said anything about this incident.

Q. Have you discussed it with anyone since it occurred?

A. Mr. Loudermilk that evening.

Q. He is the only one to whom you mentioned the issue until today?

A. I may have talked to half a dozen people. If I did, it was in a joke.

Q. You related this incident in considerable detail. Did it seem quite important to you at the time?

A. Yes; because Mr. Loudermilk had jumped all over me that night.

Q. When you told him about it?

1952 A. No; he heard about it from the Mackay office. I believe someone from the Mackay office had protested to him while he was on picket duty.

Q. He had heard a different version of the incident from the one you have now related?

A. Well, the different version could be none but what I heard. I heard Miss McKenna tell over the telephone that she had been intercepted and was not able to cross the picket line.

Q. What did Loudermilk bawl you out for?

A. He said I had no business stopping any of the girls.

Q. That was all there was to it?

A. Mr. Loudermilk is very voluble. We went quite a ways talking about it.

Q. You told him as much about the incident as you have related here on the stand?

A. No; I merely told him that the girl didn't want to go to work. We just kidded about it. We went down the street. He realized that it would put a bad face on the strike picture. I was sorry that it had occurred.

Q. But your memory now is pretty vivid of all the details?

A. I was very worried about it, because I didn't want to—I didn't want this interpretation made of any of the strikers. The strikers, as far as I saw them, were always decent in everything that they did.

1953 Q. Did you make any attempt to inform the company of the incident?

A. I see no reason to cut the girl's throat.

Q. Can you answer the question?

A. No.

Q. But you say you were very much concerned with the strikers getting that reputation?

A. I was.

Q. You said you thought so much about it because you were concerned about the strikers getting a reputation for doing that sort of thing?

A. Well, the total responsibility for doing that was placed upon myself and that is why I was concerned.

Q. But you did nothing about it?

A. What could I do? I was on strike.

Q. To correct the impression that the company had of the incident?

A. Well, inasmuch as myself and Miss McKenna were both joking, I saw no reason why I should rush up to the company and say Miss McKenna was lying about it. I stood and heard her on the telephone when she told them that we had not permitted her to cross the picket line.

Q. What, exactly, did you hear her say on the telephone?

A. That she couldn't get across the picket lines; that she couldn't get to work. Prior to that she had called for mother.

1954 Q. Did she say the same thing to her mother?

A. I believe she explained the situation as it truly was.

Q. What do you remember she told her mother?

A. Well, she said some of the boys had stopped her, and she was in Foster's Lunch, and she was in no danger.

Q. Is that all?

A. Well, I couldn't say exactly all she talked to her mother, because she was talking to her mother and I didn't feel I should eavesdrop on her.

Q. Did you eavesdrop on her the next conversation she had?

A. Yes; she called me over and asked me to tell her what to say.
Q. You told her?
A. I told her, "To protect yourself you had better mention our names."
Q. You didn't say anything about protecting somebody else?
A. Who else was there to protect?
Q. Just answer the question.
A. No.
Q. Did you interfere with anything she tried to say over the telephone?
A. No.
Mr. MERRICK. All right.
Trial Examiner EICKHOFF. That is all. Does that close the case, except for the argument?
1955 Mr. LIVINGSTON. No; we want to put Miss McKenna back on the stand.
Trial Examiner EICKHOFF. You do?
Mr. LIVINGSTON. Yes; and more witnesses on this subject, if the Examiner will permit. Miss McKenna.

ALICE MCKENNA, recalled as a witness for the respondent, the Mackay Radio and Telegraph Company, having been previously sworn, testified as follows:

Further direct examination by Mr. LIVINGSTON:

Q. You heard Mr. Rone's testimony. Did you hear him testify to an incident in which you addressed some gentleman on the street as "You lucky stiffs"?
A. Yes.
Q. Did you ever say anything of the kind to any gentleman in your life?
A. No.
Q. Did you ever say to anybody in your life that you are "a lucky stiff"?
A. No.
Q. Did you ever make such a statement to Mr. Rone?
A. No.
Q. Did you ever say anything to anybody with particular reference to the occasion narrated by Mr. Rone to the effect that they were lucky because they didn't have to work?
1956 A. No.
Q. Did you tell Mr. Rone that you would meet him there at four o'clock in the morning because you were going to a party that night?
A. No.
Q. On the occasion when you saw Mr. Rone, the next day, did you tell him that you were sorry, or chided him because he hadn't met you at four o'clock when you returned to work?
A. No.

Q. Did you return to work at four o'clock?
A. No.
Q. What time did you return to work?
A. Two.
Q. Did you tell Mr. Rone that he should have been there because you had your green formal on?
A. Yes.
Q. You did tell him that?
A. No; oh, no.
Q. By the way, did you have a green formal?
A. No.
Q. And in what costume did you return to work, if you please?
A. A blouse and skirt.
Q. Yes. Now, did you say anything to Mr. Rone that you didn't want to go up to work, and that you wanted to be
1957 stopped?
A. No.
Q. Did you go skipping down the street with Mr. Clifford?
A. No.
Q. Were you enjoying yourself at the time, or were you frightened?
A. I was frightened.
Q. Did you telephone your mother in the presence of Mr. Rone?
A. No.
Q. You did telephone your mother, however?
A. Yes.
Q. Had Mr. Rone left before you telephoned her?
A. Yes.
Q. What was the substance of your conversation with your mother?
A. I asked if my uncle had left, and if he hadn't left, please take me down to work.

Trial Examiner EICKHOFF. Is that proper impeachment to ask her what she told her mother?

Mr. LIVINGSTON. Yes; this man listened to a conversation in which she said certain things.

Trial Examiner EICKHOFF. I don't think that was his testimony.

Mr. LIVINGSTON. Does the Examiner rule that the preceding
1958 witness did not testify to overhearing a conversation with her mother?

Trial Examiner EICKHOFF. He said he walked away.

Mr. LIVINGSTON. But he did hear the first part of the conversation, that she said to her mother that she was kept in the picket lines and need not worry, that she was in no danger. That was what he eavesdropped on, according to his testimony.

By Mr. LIVINGSTON:

Q. Did you ask Mr. Rone what to say when you telephoned the company's office?

A. Mr. Rone had his hand over the mouthpiece; told me what to say when I phoned the office. He told me what to say.

Q. What did he tell you?

A. He said to tell them that I was being held there and couldn't get through the picket lines.

Trial Examiner EICKHOFF. Did you ask him what to say?

The WITNESS. No; I didn't.

Mr. LIVINGSTON. Did you wait there until you could leave in safety?

A. Yes.

Q. When the police came, did you go right up to work?

A. Yes.

Mr. EDISES. Just a minute.

Further cross examination by Mr. EDISES:

1958 Q. You say Mr. Rone held his hand on the mouthpiece of the telephone?

A. Yes.

Q. How long did he keep his hand there?

A. A few minutes; then I guess he realized how silly it was, then he took it away.

Q. Mr. Rone told you to tell the company that you were being held on the picket line, was that right?

A. That I wasn't allowed through the picket lines.

Q. That you were not allowed through the picket lines?

A. Yes.

Mr. EDISES. That is all.

Mr. MERRICK. That is all.

Trial Examiner EICKHOFF. Any further evidence?

Mr. MERRICK. Since this whole line has been opened up with the corroborating intent to impeach, I think we may want to call some more witnesses.

Mr. LIVINGSTON. I suggest tomorrow morning at 10 o'clock, whichever the Examiner prefers—now or tomorrow morning at 10 o'clock.

Mr. EDISES. Whom do you propose to call?

Mr. LIVINGSTON. We will let you know when we call him.

Trial Examiner EICKHOFF. You want to go on again at 10 o'clock in the morning? You still want to argue the case at two?

Mr. LIVINGSTON. Yes.

1960 Trial Examiner EICKHOFF. Well, I may not permit the argument at two, if we open up in the morning.

Mr. LIVINGSTON. Very well, we will take that chance.

Trial Examiner EICKHOFF. Very well, ten o'clock.

Mr. LIVINGSTON. Thank you.

(Thereupon, at 4:00 o'clock p. m. the hearing in the above-entitled cause was adjourned until 10 o'clock a. m. Friday, December 20, 1935.)

1961 [Title omitted.]

265 FEDERAL BUILDING,
SAN FRANCISCO, CALIFORNIA,
Friday, December 20, 1935.

Met pursuant to adjournment at 10:05 o'clock a. m.

PROCEEDINGS

Trial Examiner EICKHOFF. Are you ready to proceed?
Mr. LIVINGSTON. Yes. Take the stand, Mr. Clifford.

RICHARD P. CLIFFORD, called as a witness for the Respondent, Mackay Radio and Telegraph Company, being first duly sworn, testified as follows:

Direct examination by Mr. LIVINGSTON:

Q. What is your name?
1962 A. Richard P. Clifford.
Q. You are an employe of the Mackay Radio and Telegraph Company?
A. I am.
Q. And you were one of the strikers during the strike of October?
A. I was.
Q. Do you remember Sunday night when you were on the picket line during that strike?
A. I remember Sunday night. I don't know if I was on picket duty or not.
Q. You were in the vicinity of the company's building at 22 Battery Street?
A. Yes; I was in front of the building.
Q. Do you know Miss McKenna, the lady sitting at this table?
A. I do.
Q. Do you know Mr. Rone?
A. Yes.
Q. Mr. Phelps?
A. Yes.
Q. Do you remember seeing Miss McKenna that night?
A. Yes.
Q. Do you remember the occasion of you and Mr. Rone and Mr. Phelps taking Miss McKenna down Market Street?
1963 A. Yes.
Q. Did you skip down Market Street?
A. I don't believe we skipped; no.
Q. Did you walk?
A. Walked, yes.
Q. The four of you were walking abreast at the time down the north side of Market Street, were you not?
A. We were.

Q. Did you hear Miss McKenna say anything about that you should have met her in the early morning because she had her green formal on, or anything of that kind?

A. No. But I wasn't there when she first talked to the group of men.

Q. But you didn't hear her say that, did you?

A. No.

Q. How soon did you join the group?

A. Well, I was standing in the front of the building and I noticed Mr. Black—the front of the building is about 100 feet from the corner, or more—I was standing in front of the building and I noticed Mr. Black walking across the street to the statue with his hand on Miss McKenna's back. I am not sure whether we all went over to the statue or whether we met her on the corner. But that is the first—I don't know what was said to her the first time she approached the picket.

1964 Q. You don't know what she said to Black then?

A. No.

Q. Did you hear Miss McKenna ask, or suggest to anybody, that something should be done to keep her from going to work?

A. No, I didn't hear anything. When you put that like that—I don't like the question that way because that shows she really did want to go to work.

Q. What?

A. When you put it that way you want to bring out whether she protested. If you will put the question again——

Q. (Interrupting.) I am trying to bring out whether it was her idea not to go to work, or whether it was your idea to suggest she shouldn't go to work?

A. It was suggested she shouldn't.

Q. While you were walking down Market Street, or when you first talked to her, was it suggested, "If you don't go back to work it will help us boys?"

A. Yes.

Q. By whom?

A. I don't remember.

Q. That was the general tenor of the conversation?

A. Yes.

Q. But you were polite to her, weren't you?

A. Absolutely.

Mr. LIVINGSTON. That is all.

1965 Cross examination by Mr. EDISES:

Q. Mr. Clifford, you said, "I don't believe we skipped." In other words it is possible that you may have, is that correct?

A. It is possible, because we were in a jocular frame of mind all down the street, but I don't remember having actually skipped.

Mr. EDISES. No further questions.

Redirect examination by Mr. LIVINGSTON:

Q. You say you were a jocular frame of mind. You mean you and the other two boys?

A. All of us.

Q. Was she?

A. Yes, smiling and talking; and she did not appear to be frightened.

Q. She didn't appear to be frightened?

A. She did not.

Q. You don't know whether she was?

A. No.

Mr. EDISES. I object to that.

Mr. LIVINGSTON. That is all.

Mr. EDISES. No further questions.

Trial Examiner EICKHOFF. That is all.

(Witness excused.)

Trial Examiner EICKHOFF. Is that your case?

1966 Mr. LIVINGSTON. That is all.

Mr. MERRICK. That is all.

Mr. LIVINGSTON. Just a moment.

(Thereupon counsel Livingston and counsel Merrick conferred.)

Motion to strike certain evidence

Mr. LIVINGSTON. If the Examiner pleases, Mr. Merrick and I were discussing the best policy in handling the testimony that was admitted over objection, particularly testimony that was plainly hearsay, and also more emphasis upon testimony coming from people who, according to our view, were not authorized and cannot bind the company by their statements.

Normally, in a trial before a judge, it might be proper at this time to make motion to strike out evidence which has been admitted over objection in light of the fact that nothing has been developed to connect up, as the saying is, certain parties with the company.

On the other hand, the Examiner might take the view, as it has heretofore indicated, instead of following technical rules he prefers to have the whole record in and consider the case from that standpoint.

We do not want to waive any objections by failure to make the motion to strike. Therefore, if the Examiner will entertain a motion in that form, we might say we move to strike out all the evidence as to which objection was made, and the Examiner

1967 may say to us, "I direct you not to make specific motions," and thereby save a great deal of time and trouble.

So we would like to get the Examiner's view in that respect.

Trial Examiner EICKHOFF. If you feel that that sort of a motion will protect you, I think that is sufficient.

Mr. LIVINGSTON. You mean a specific motion?

Trial Examiner EICKHOFF. The motion that has been made.

Mr. LIVINGSTON. No; I didn't make a motion. I suggested the possibility of making a motion in one form or another, depending on the Examiner's view.

For example, if I want to make a perfect record on appeal in the trial court, for example, after Mr. McLaughlin's statements were testified to, the normal thing, after the testimony is admitted, is for the Government to connect up Mr. McLaughlin with the company to show that his statements are either authorized or in some way a part of the res gestae—which couldn't be so in this case—and technically the proper motion at this time is:

I move to strike out all of Mr. McLaughlin's testimony given on such and such occasion.

We could do that for a couple of days, if we wanted to go all through the testimony piecemeal.

All the Examiner needs to do, I suggest, if you please,
1968 is to say to us: "I will not entertain specific motions, because I do not think it is necessary. I will consider that you have moved to strike all of the testimony specifically, and with specific reference to each part to which you have made objection, and I will deny that motion now."

In that event there would be no further discussion.

If the Examiner makes that statement, then we save a lot of time and argument, and will get to our argument much sooner.

I would like to have the Examiner's views so we can keep our record straight. That is all.

Trial Examiner EICKHOFF. Any objection to such a procedure?

Mr. EDISES. I naturally cannot state that I have any objection to his making a motion, but as far as the granting of such a motion is concerned, I would have to object as strongly as I am capable of objecting to your granting it.

Trial Examiner EICKHOFF. I do not think we should take the time to go over this long transcript and analyze each bit of evidence with a view to striking it. I am opposed to that procedure.

I am perfectly willing to have it understood that it is deemed that motions to strike have been made, and denied.

1969 Mr. LIVINGSTON. That is as to each specific part of the testimony as to which we have entered objections heretofore.

Trial Examiner EICKHOFF. Yes.

Mr. LIVINGSTON. And that such motions to strike have been made upon oral grounds, without the necessity of stating them?

Trial Examiner EICKHOFF. Yes; and denied.

Mr. LIVINGSTON. If that is agreeable, we have preserved our record and saved a great deal of time.

Mr. EDISES. Inasmuch as the Examiner has denied the motion, I won't state the reasons that I had in mind for opposing the motions, unless the Examiner feels that some statement ought to be in the record.

Trial Examiner EICKHOFF. Do you care to have any similar understanding with respect to the evidence to which you have objected?

Mr. EDISES. I believe it would be proper to have the same understanding, and I hereby make the same motion as Mr. Livingston has made with reference to the testimony introduced by the Respondent's witnesses, and to which I have objected.

Mr. LIVINGSTON. We will stipulate that the same motion, the same statement and ruling may be made.

Trial Examiner EICKHOFF. Very well.

Colloquy

Do both sides rest?

1970 Mr. LIVINGSTON. Yes.

Mr. MERRICK. Yes.

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. How about the oral argument?

Mr. LIVINGSTON. 2 o'clock.

Trial Examiner EICKHOFF. Will both of you be ready at 2 o'clock?

Mr. EDISES. We are ready right now, if the Examiner wants to go ahead.

Mr. LIVINGSTON. All right, go ahead.

Mr. EDISES. However, with the understanding that we could finish the argument this morning. In other words, if we cannot finish the argument in half a day, I should prefer to wait until this afternoon, at which time it would be possible to have Mr. Merrick reply, and possibly rebuttal on my part, and so on.

On second thought, Mr. Examiner——

Trial Examiner EICKHOFF. This need not go on the record.

(Discussion off the record.)

Trial Examiner EICKHOFF. We will recess until 2 o'clock.

(Thereupon, at 10:20 o'clock a. m., a recess was taken until 2 o'clock p. m.)

1971 AFTER RECESS

(The hearing was resumed at 2:05 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner EICKHOFF. Are you ready, Mr. Edises?

Mr. EDISES. Yes.

Trial Examiner EICKHOFF. Are you gentlemen ready?

Mr. MERRICK. Yes, I am ready.

Trial Examiner EICKHOFF. Proceed; it is now 2:05 p. m.

(Here followed the opening oral argument by counsel Edises, a portion of which was reported on order of Trial Examiner Eickhoff, and later ordered stricken physically from the record as hereinafter appears.)

Trial Examiner EICKHOFF. You may proceed, Mr. Merrick.

(Here followed oral argument by counsel Merrick.)

Trial Examiner EICKHOFF. (Interrupting counsel Merrick in the course of his oral argument.) We will take a five minute recess.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Trial Examiner EICKHOFF. I instruct the reporter to physically strike from the record any portion of the argument that has been recorded this afternoon; and I further instruct him not to transcribe any portion of the argument that has been made this afternoon in the record which is to be transmitted to the National Board at Washington.

1972 Mr. MERRICK. May the record show, Mr. Examiner, that in the course of argument, and after the submission of the evidence, a telegram was received by the Examiner, and that pursuant to the receipt of that telegram you directed that the argument should be ended, and determined that the record would be transmitted to the Board for its consideration.

I would like that to appear in the record.

Trial Examiner EICKHOFF. I will read the telegram into the record.

I have just received the following telegram from the National Labor Relations Board at Washington:

"Board will transfer Mackay case and make it Board case for purpose of expedition. Will you please announce to parties that they may have fifteen days from close of hearing to file briefs if they wish.

(Signed) NATIONAL LABOR RELATIONS BOARD."

Unless the parties have some further statement to make, I will declare the hearing closed.

Mr. MERRICK. The only thing further I want to show is that that telegram arrived during the argument, and after the submission of the evidence and the completion of the taking of evidence.

Trial Examiner EICKHOFF. Yes, it arrived when Mr. Merrick, representing Respondent, was about half through his oral argument, namely, about 3:23 p. m. this day.

1973 The hearing is closed.

(Whereupon, at 3:35 o'clock p. m., December 20, 1935, the hearing in the above-entitled matter was closed.)

1974 *Exhibit B-1*

AMERICAN RADIO TELEGRAPHISTS ASSOCIATION, INC.,
52 CALIFORNIA STREET,
San Francisco, California, March 28, 1935.

DEAR BROTHER: Because of the rapidly advancing cost of living it is reasonable to believe that wages must be adjusted accordingly.

At a meeting between an ARTA PTP Committee and Mr. Tuel and Mr. Rodman of the Mackay Company Mr. Tuel said: "In the

event that, by January 1, 1935, you have not received a 4% blanket increase, or have not been put on a 40 hour week by the NRA, you can again take up the subject of further salary adjustments with me."

To date, March 28, 1935, we have received neither; therefore, the inclosed ballot of wage schedules and hours is offered to you, and you are urged to mark the ballot in the rating in which you are now classified and return it to the San Francisco Point-to-Point Local of the ARTA, 52 California Street. The completed ballots are necessary so that we may draw up a schedule to present to Mr. Tuel which will represent the demands of the majority of operators, technicians, shift engineers, etc., employed by the Mackay Company.

Fraternally,

ADMINISTRATIVE COMMITTEE,
San Francisco PTP Local, ARTA,
52 California Street, San Francisco, California.

1975 AUTHORIZATION TO REPRESENT

I hereby appoint, authorize, and delegate the American Radio Telegraphists' Association, Inc., and/or any of its officers or agents to act as my representative at all times in respect to questions concerning my wages and working conditions. This authorization supersedes and takes precedence over any authorization, ballots, and similar documents that I may have signed before this date. Date ——, Station—, Signature (in ink) Card # ——.

I, ——, a member of the ARTA (cross out if non-member and a Mackay employee in the capacity of —— at the —— and employed for —— years by the Mackay Radio and Tel. Co. hereby cast my vote for the following wage schedules and working conditions for operators, shift engineers, and other employees of the Mackay co.

Tape operators	Supervisors	Operating electricians
Class A		
" B		
" C		
" D		
Students ——.		Apprentice ——.

Receiving station personnel.

1. Stations equipped to accommodate simultaneously a maximum of five channels: Station manager minimum $—— per month. Watch operator minimum $—— per month.

2. Stations equipped to accommodate simultaneously a maximum of ten channels and whose normal routine reception when all circuits are in operation consists of five or more channels: Station manager minimum $—— per month. Watch operator minimum $—— per month.

3. Stations equipped to accommodate simultaneously a maximum of fifteen channels and whose normal routine reception consists of ten or more channels when all circuits are in operation: Station manager a minimum $—— per month. Watch operator a minimum $—— per month.

4. Stations equipped to accommodate simultaneously a maximum of twenty channels and whose normal routine reception when all circuits are in operation consists of fifteen or more channels shall require a receiver monitoring personnel of two operators per watch. Station manager a minimum $—— per month. Senior watch operator a minimum $—— per month. Junior watch operator a minimum $—— per month.

1976 5. Stations equipped to accommodate simultaneously more than 20 channels shall require a watch personnel as follows: Station manager a minimum of $—— per month. 20–25 channels, two oprs., senior min., $—— per month; junior min., $—— per month. 20–30 channels three oprs., senior min., $—— per month; junior min., $—— per month; junior min., $—— per month.

6. Stations with frequency standard equipment where watch personnel in addition to regular monitoring duties are required to operate this equipment. This duty shall be computed as five extra channels for the purpose of fixing salaries and number of men required per watch.

Yes, ——. No, ——. Remarks, ——.

7. Maintenance and/or relief operators in the above classifications.

A. Maintenance man only—minimum, $—— per month.

B. Relief operator only—minimum, $—— per month.

C. Maintenance and relief opr.—minimum, $—— per month.

D. Shall maintenance man receive same salary as senior in each class. Yes, ——. No, ——.

Proposed standard wage scale for transmitting station operators.

1. In any transmitting station equipped to operate or operating five transmitters or less, the wages shall be: Station manager, minimum $—— per month. Watch operator, minimum $—— per month.

2. In any transmitting station operating or equipped to operate more than five transmitters, watch operators shall be paid one dollar per month extra for each transmitter for which he is responsible in addition to the base salary of item 1. Yes, ——. No, ——. Remarks, ——.

3. A transmitter shall be defined as apparatus capable of radiating signals, regardless of frequency or power output.

All classifications vote on the following:

Shall overtime at the rate of time and a half be paid for the following recognized company holidays? Newyear's, Washington's Birthday, Decoration day, Fourth of July, Thanksgiving, and Christmas. Yes, ——. No, ——. Remarks, ——.

Shall a day and a half off be given in return for a Sunday worked in the event of the continuance of the NRA? Yes, ——. No, ——.

Which weekly hour base do you think the above wage scale should apply to? 48, ——. 44, ——. 40, ——.

Do you believe that we are entitled to the same pay that competing companies grant their operators? Yes, ——. No, ——.

1977 Marine Coastal Stations:

1. Station manager, coast station employing more than seven watch operators. Min., $——.

2. Station manager, coast station employing less than seven watch operators. Min., $——.

3. Watch operator, handling marine and morse circuits. Min., $——.

4. Watch operator, handling marine circuit only. Min., $——.

5. Watch operator, handling marine circuit and tuning from one to five PTP receivers. Min., $——.

6. Watch operator, handling marine circuits and tuning from five to ten PTP receivers. Min., $——.

7. Maintenance and/or relief man, $——.

Do you favor the continuance of the seven day (56 hour) working week at coast stations employing only three operators (Clearwater, Hillsboro, Merrillville, St. Johns, etc.)? Yes, ——. No, ——.

In the event you favor a seven day working week, do you favor the payment of straight time or time and one-half for Sundays and Holidays? ——.

Instructions for voting: You do not have to be an ARTA member to vote on this ballot. Please read the ballot over carefully before voting. Insofar as wage schedules are concerned vote only in the rating in which you are now classified.

Return the ballot on or before May first, 1935, to PTP local of the ARTA, 52 California St., San Francisco.

If you are not a member and are interested in becoming one see or write your nearest local ARTA representative.

1978 *Exhibit B–2*

Minutes Special Joint Meeting of the PTP and Marine Locals of ARTA, Held at 52 California Street, San Francisco, September 13th, 1935

Chairman: Mervyn Rathborne. Recorder: R. C. Henning.

ROLL CALL

R. Asplund	E. R. Bevitt	B. Nesbett
J. W. Russell	J. A. Homa	P. A. Stevins
L. K. Bash	Mervyn Rathborne	A. Doty
L. A. Kroll	Wayne Helfer	J. H. Wright
O. P. Parker	J. J. Ludlam	G. E. Palmer
L. J. Roux	C. J. Frear	A. Loudermilk
J. Sanner	F. Mangelsdorf	A. J. Stocklin
D. V. Murphy	E. R. Ferguson	P. A. Lee
S. E. Price	E. K. Cady	M. F. York
F. T. Cookson	R. Gaspar	J. D. Hardin
A. G. Weeks	L. N. Rone	C. C. Williams
T. A. Toppi	B. Harrison	C. W. LaBelle
M. Sylvestri	E. N. Martinelli	R. P. Clifford
R. C. Henning	T. M. Humphrey	E. J. Lomba
E. Fabian	W. J. Greene	

Meeting called to order by Chairman Rathborne at 8:00 p. m.

Reading of Minutes of Previous Meeting.—Due to the fact that this meeting is a joint meeting of Marine and PTP men it is decided to omit the reading of the minutes of the previous meeting of either Local.

Communications and Bills.—Chair reads following communications:

MKA 223 G 60 DL

BP NEW YORK, *1127 A, Sept. 13, 1935.*

L. K. BASH, *San Francisco, Cal.*

RMCA has signed agreement with ARTA similar to that appearing last ARTA magazine. Mackay refused sign similar agreement and attempting to load ships with strikebreakers. Joint action on marine and PTP agreements now before Mackay necessary. Call special meeting tonight to consider joint action if they continue to refuse to sign. Wire results of meeting. Advise Rathborne.

SALISBURY.

856A.

Bro. Rathborne points out to the members that this meeting was called primarily to decide if the Point-to-Point men wish to present their agreement together with that of the Marine men. And should this be done, just how far we will cooperate with each other in backing up these agreements.

Bro. Bash relates his actions after receiving the telegram from Salisbury and what transpired in a conference with Messrs. Stone and Rodman which was attended by Bros. Bash, Rone, and Palmer, representing the PTP Local; and by Bros. Asplund, Homa, and Rathborne for the Marine Local. Immediately after receiving the telegram at 9:00 A. M. Bash was granted a two hour leave on his own

time. Bash requested Rathborne to come over and together they called upon Mr. Russ, Marine Superintendent of Mackay Radio. They accused Russ of "scab-herding" and threatened that any ship on which Mackay Radio Marine placed a non-union operator would be tied up until the shipowners would break their contracts with them. Apparently Russ had told Rodman what had occurred, for at 3:00 P. M. Bash is requested to appear in Rodman's office. Bash tells him that nothing can be transacted without the presence of at least two other ARTA members, so Rone and Palmer are called in. Stone is of the opinion that ARTA is taking unfair advantage of them. He frankly admitted that the presentation of our agreement has occurred at a most inopportune time. Stone stated that he would start negotiations next Thursday (Sept. 19) if he were allowed to go back to New York first. The subject of the discrimination shown to Pacific Coast operators in the placement of men in new offices and positions was brought up and was acknowledged by Stone. A plaintive story was given by Stone of how the company has been in the "red" for the last four years and of the intention of the company to close down the coast-wise circuits, the land lines being more suited for this traffic. The Mackay Radio Company is still in the hands of the receivers and Stone says he can therefore do nothing immediately. Bash had no copy of our agreement with him and hence matters pertaining to our agreement were but lightly touched and no commitments were made. It is suggested by Bash that we send a vote of confidence to Salisbury and Pyle.

1979

Bro. Asplund gave his version of the conference from a marine man's point of view. He wanted to have Stone agree to the hiring or only ARTA men for marine positions, but no headway was made in this direction. Stone, Asplund states, frankly confessed that he was caught at a very bad time to be presented with our agreements. Asplund says that every time the subject of union recognition was brought up, that Stone would avoid the issue.

Rone was impressed at the conference with the fact that we had a keen witted individual in the person of Mr. Stone to combat. His geniality was quite disarming and Rone tells that had he not known better, he would have most certainly believed in Stone's sincerity. RMCA was given about three weeks to consider the marine contract, whereas Stone complained that he has had but a half an hour. Stone stated that he was a poor man and was living on his wages. They dwelt lightly on the PTP situation. Stone said that no more "Sectionalism" would be shown in appointments for new positions.

Bro. Homa presenting his view of the conference, relates that it is his opinion that Stone is trying to call a bluff. Homa feels that we should present the agreement, and if they refuse to sign it that we affect a boycott against the Mackay Radio Marine.

Bro. Palmer, who was present at the conference, tells his impressions. Palmer tells that Stone threatened to discontinue all domestic service if the operators went out on strike. The foreign circuits

would be continued, however. Palmer asked why it is that RCA is entering the domestic field when Mackay Radio has never made any profit on these circuits. Stone's reply was that they would lose money heavily on this venture. The question of whether Mackay Radio pays exorbitant prices for radio equipment was answered by Stone to the effect that Mackay Radio pays no more for their equipment than RCA or Globe Wireless.

Bro. Rathborne tells that these ARTA men met with Stone and Rodman to apply "pressure" on Stone. Rathborne is inclined to believe that Stone is rather tied down at the moment with legal matters, but, however, a verbal agreement that he would start negotiations on our agreements next Thursday (Sept. 19) was gained. Stone refused to sign a memorandum instructing the Mackay Radio Marine superintendents to hire only ARTA men.

Bro. Rone suggests that we should now determine to what extent the Marine men and PTP men wish to cooperate in presenting their agreements together.

Bro. Rathborne believes that the marine agreement will be the easier of the two agreements to get signed.

Bro. Rone tells that Stone has shown that he fears a marine
1980 boycott far more than a strike of the PTP men.

Bro. Loudermilk thinks that to walk out with the marine men would be to no avail but that the PTP men should threaten a sympathy strike with the marine men if they were to refuse to sign their agreement.

Bro. Rathborne questions the likelihood of other locals of PTP men going on a sympathy strike for marine men.

Bro. Loudermilk conveys that he thinks that in presenting both agreements at the same time would be rushing things at too fast a pace.

Bro. Russell says that we should threaten the Mackay Radio Marine with strike action if they will not sign the PTP agreement.

Bro. Rone offers the following motion: (As reworded by Bro. Martinelli)

Be it resolved: That the Point to Point and Marine Divisions of the ARTA be and are hereby united for the purposes of joint action as pertains to any and all negotiations with the Mackay Radio Company for the consummation of these certain Agreements now pending with said Mackay Radio designated as the Marine Hiring Agreement and the Point to Point General Wage and Working Agreement; it being further resolved that neither of said agreements shall be adopted and ratified by either of said divisions of the ARTA to the exclusion of the other; it being further resolved and jointly agreed that the Mackay Radio Company shall have unto and including the —— day of ——, 1935, within which to execute said agreement or as amended or modified by resolution of the joint divisions hereunder.

Bro. Russell seconds the motion. Chairman Rathborne announces that the motion is open for discussion, and the floor is open for sug-

gestions as to time to be allowed to Mackay Radio to consider our agreements.

Bro. Cookson asks what is the necessary quota of the membership to vote for strike action.

Bro. Rathborne answers that a large and overwhelming majority vote is necessary.

Bro. Asplund offers that a week in his opinion would be sufficient for the company to consider our agreements.

Bro. Rathborne makes the following amendment to Bro. Rone's motion: That unless the officers of the ARTA negotiating such agreement deem such negotiations are progressing in a satisfactory manner.

Bro. Rone amends his motion to include the date of September 23 in the space open therefore. Bro. Russell seconds the amended motion.

Bro. Rone reads the resolution as it now stands:

Be it resolved: That the Point to Point and Marine Divisions of the ARTA be and are hereby united for the purposes of joint action as pertains to any and all negotiations with the Mackay Radio Company for the consummation of those certain Agreements now pending with said Mackay Radio designated as the Marine Hiring Agreement and the Point to Point General Wage and Working Agreement; it being further resolved that neither of said agreements shall be adopted and ratified by either of said divisions of the ARTA to the exclusion of the other; it being further resolved and jointly agreed that the Mackay Radio Company shall have unto and including Monday, the 23rd day of September 1935, within which to execute said agreements or as amended or modified by resolution of the joint divisions hereunder, unless the officers of the ARTA negotiating such agreement deem such negotiations are progressing in a satisfactory manner.

1981 A vote was taken on the amendment which applied the date of Sept. 23. In favor of, 24; against, 9.

A vote taken on the motion as a whole. In favor of, 38; against, 2. Motion being so carried.

Chairman Rathborne desires to read the agreement now in effect between RMCA and ARTA but due to lack of time selects the clause in this agreement which compels the ARTA to accept "scabs" into the union. A discussion of this clause follows.

Bro. Harrison suggests that there appears to be no further business at hand.

Bro. Ferguson moves that we adjourn the meeting. Bro. Cookson 2nds the motion. Voted upon and carried unanimously.

Meeting adjourned at 10:07 P. M.

R. C. HENNING, *Recorder.*

I, the undersigned, member of ARTA PTP DIV. have read the above minutes. I take this opportunity to vote on the resolution regarding joint action.

Approvals: J. Benson, N. C. Hoxie, E. C. Barber, E. Barlow, R. I. Hatch, William C. Adams, J. P. Foley, A. E. Patterson, C. C. Williams, F. A. Benn, H. J. Coy, R. Sayers, C. V. Parker, F. E. Schmiedicke, K. R. Bartlett, C. A. Jones, M. Stoughton, J. H. Westcott.

Disapprovals: J. M. McKercher, Wm. J. Kane.

Silent: A. M. McLaughlin. Until read agreements.

1982 *Exhibit B–3*

MINUTES

Twenty-second Meeting of the San Francisco Point-to-Point Local of the ARTA, held at 52 California Street, San Francisco, California, October 4, 1935, at 8:27 P. M.

Chairman, L. K. Bash. Recorder, R. C. Henning.

ROLL CALL

L. A. Kroll	R. L. McClure	L. K. Bash
P. D. Phelps	A. Doty	R. P. Clifford
D. V. Murphy	J. O. Oldaker	C. H. Jones
G. E. Palmer	M. M. McGeorge	A. J. Stocklin
J. H. Wright	P. A. Lee	C. V. Parker.
M. Stoughton	E. K. Cady	P. A. Stevens
O. P. Parker	H. J. Poy	T. A. Toppi
R. C. Henning	E. A. Holgerson	

8:27, Meeting called to order by Chairman Bash.

Reading of the minutes of the previous meeting was omitted.

Bro. Bash relates that he has just talked with Salisbury in New York and has learned that Stone refused to sign or negotiate a written agreement with the ARTA. Stone however offered the following concessions: An increase of $5,140. per year to be applied to MK operators salary only; a wage increase to $165. per month for the men at MX and the addition of one more man at MX. Salisbury has requested Bash to call the members to comply with a "strike vote" taken at a previous meeting. Bash announces that this strike is to become effective at 12:00 midnight Friday, October 4, 1935. This action will be duplicated in New York where at 3:00 A. M. (midnight our time) they will also walk out. At the present time the Portland, Seattle, and Los Angeles Locals are holding meetings to decide upon strike action.

Bro. Rathborne tells that a message will be sent through KPH to all ships at sea stating that any Mackay Radio manned ships found operating will be considered to be operated by "scabs."

Bro. Murphy tells of a lengthy talk with Jorgenson this afternoon in which Jorgenson requested that Murphy try to "calm down" the membership. Jorgenson told of Stone's refusal to sign our agreement.

Bro. Stocklin suggests that a Strike Committee be selected to deal with the various situations arising.

Bro. Bash calls for nominations for committee men. These men will by relieving each other maintain a continuous watch at the ARTA office and MX and LO will maintain a similar service, remaining at their own locations.

Bro. McGeorge nominates Bro. Henderson.

Bro. Kroll nominates Bro. Stocklin.

1983 Bro. Stocklin nominates Bro. Palmer.

Bro. McGeorge nominates Bro. Bash.

Bro. Clifford nominates Bro. O. P. Parker.

Bro. Stoughton nominates Bro. Lee.

A vote is taken on the above men for the Strike Committee. In favor, 23; against, none.

Bro. Stocklin moves that we adjourn the meeting and leave further problems up to the Strike Committee.

Bro. Clifford seconds the motion. Voted upon, carried unanimously.

Meeting adjourned at 9:35 P. M.

R. C. HENNING, *Recorder.*

1984 *Exhibit B–4*

POSTAL TELEGRAPH CABLE COMPANY

67 Broad Street, New York City

PERSONAL HISTORY RECORD

Present address: Astoria Hotel, 510 Bush St., S. F. Tel. No. DO 3038. In emergency notify: Mrs. William Shaffer. Address 1614 Medora St., South Bend, Ind. Sex, male; race, American. Divorced. No. of dependents, partial 1. Relationship, Mother. Citizen of: U.S.A. Name Glenn Edward Palmer. Birth: March 19, 1906. Birthplace: South Bend, Ind. Height, 5′10″. Weight, 175. Indicate any physical defects, none. Have you been employed in this company before? If so give location, San Francisco, Cal., from 1930 to 1935. Have you any relatives in this company? No. By whom were you introduced to this company? R. W. Wilson.

EDUCATION

Name and location of schools attended	Date started	Date left	Did you graduate?	Courses taken and degrees
Grammar school: South Bend, Ind	1918	1919	Yes	General.
High school: South Bend, Ind	1919	1922	No	Preparatory.
College or technical school: Gt. Lakes Radio School	1922	1923	Yes	Radio.
Business or commercial school: Radio Material—San Diego.	1925	1926	Yes	Radio material.

Languages, Spanish. (Indicate whether slight, fair, or fluent), read, slight. Have you served in any branch of U. S. Military or Naval Service? Yes. If so, state branch, Naval. Period of service,

from 1922 to 1929. Class of service, R. M. Are you a member of any reserve branch of military or naval service? No.

PREVIOUS EMPLOYMENT

Name and address of previous employers (List in consecutive order—Last employer first)	Position	Date started	Date left	Salary	Reason for leaving
U. S. Govt.	Radio op.	1922	1927	60 to 155.	Hon. Dis.
Boeing aircraft, Oakland, Cal.	"	1929	1930	160.	Betterment.

Signature of applicant, GLENN E. PALMER

1985 SAN FRANCISCO, CALIFORNIA, *October 8, 1935.*

To Mr. A. C. Jorgensen, Traffic Manager, HB

From G. E. Palmer.

Confirming my verbal application to you about 9 PM, October 8th, please reinstate me in the HB Operating Force in my former position as Class A Operator.

My personal history record is attached.

(sgd.) GLENN E. PALMER.

To Capt. E. H. Dodd.

From A. C. Jorgensen.

This application for employment, together with a number of others, which are being forwarded at the same time, is subject to final approval by Mr. E. W. Stone, Operating Vice-President.

There are no vacancies in the HB Operating force at present, and there were no vacancies at the time the applicant made his verbal application to me.

(ACJ) A. C. JORGENSEN.

1986 INTER-OFFICE MEMORANDUM

To Mr. Ellery W. Stone. OCTOBER 14, 1935.
[0220 Air Mail]

From H. L. Rodman.

Subject G. E. Palmer, Application for Reemployment Forwarded.

In view of the fact that no vacancies now exist in the HB Operating Force, it is not recommended that Mr. Palmer be employed as requested by him.

It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the HB Operating Room.

H. L. R.

Enclosure.

OCTOBER 26, 1935.

To H. L. Rodman.

From Ellery W. Stone.

Returned.

Your recommendation is approved and there is no objection to favorable consideration being given this application when a vacancy occurs at San Francisco.

E. W. S.

Received, Oct. 28, 1935, Mackay Radio & Tel. Co.

1987 OCTOBER 12, 1935.

To Mr. H. L. Rodman.

From E. H. Dodd.

Forwarded.

In view of the fact that no vacancies now exist in the HB Operating Force, it is not recommended that Mr. Palmer be employed as requested by him.

It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the HB Operating Room.

E. H. DODD.

Enc.

1988 Board's Exhibit No. 5 marked for identification, later received in evidence as Respondent's Exhibit No. 13.

1989 TOTAL NUMBER RECORD

HB—SAN FRANCISCO, CALIFORNIA, *October 2, 1935.*

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	271	30	401	27	672	57
FD—Seattle	232	27	268	17	500	44
					1,172	
LA—Los Angeles	832	79	832	81	1,664	160
SX—Los Angeles (FX-SX)	72	0	78	2	150	2
					1,814	
HU—Honolulu	55	10	51	19	106	29
MA—Manila	38	10	15	14	53	24
SH—Shanghai	38	10	51	10	89	20
MJ—Tokyo	164	20	143	20	307	40
MK—New York	988	109	676	118	1664	227
CG—Chicago	183	19	125	14	308	33
					1,927	
Total	2,873	314	2,640	322	5,513	636
Miscellaneous	71	11	213	10	284	21
Total	2,944	325	2,853	332	5,797	657

Total messages of all classes for office:

Total paid messages	5,797
Total service messages	657
Grand total	6,454

Résumé of paid traffic:

Coastwise: North 1,172, South 1,814, total	2,986
Transcontinental	1,972
Transpacific	555

("PAC" traffic already included under MK—New York: Sent 33, Recd. 6.)

Total number record—Continued

1990 OCTOBER 3, 1935.

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	255	29	357	28	612	55
FD—Seattle	241	24	246	19	487	43
					1,099	
LA—Los Angeles	793	75	852	67	1,645	142
SX—Los Angeles (FX-SX)	67	1	86	2	153	3
					1,798	
HU—Honolulu	92	23	67	14	159	37
MA—Manila	39	25	13	14	52	39
SH—Shanghai	64	10	61	8	125	18
MJ—Tokyo	176	32	151	32	327	64
					664	
MK—New York	792	101	688	111	1,480	212
CG—Chicago	184	19	147	17	331	36
Total	2,703	339	2,668	310	5,371	649
Miscellaneous	77	7	149	6	226	13
Total	2,780	346	2,817	316	5,597	662

Total messages of all classes for office:

Total paid messages	5,597
Total service messages	662
Grand total	6,259

Résumé of paid traffic:

Coastwise: North 1,099, South 1,798, total	2,897
Transcontinental	1,811
Transpacific	663

("PAC" traffic already included under MK—New York: Sent 41, Recd., 3.)

Total number record—Continued

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	278	46	449	46	727	92
FD—Seattle	225	29	248	30	473	59
LA—Los Angeles	851	79	825	82	1,676	161
SX—Los Angeles (FX-SX)	58	0	61	1	119	1
HU—Honolulu	54	7	46	7	100	14
MA—Manila	46	17	16	14	62	31
SH—Shanghai	41	10	57	11	98	21
MJ—Tokyo	177	43	187	37	364	80
MK—New York	936	127	722	128	1,685	255
CG—Chicago	190	24	124	17	314	41
Total	2,883	382	2,735	373	5,618	755
Miscellaneous	80	10	150	8	230	18
Total	2,963	392	2,885	381	5,848	773

Total messages of all classes for office:

Total paid messages	5,848
Total service messages	773
Grand total	6,621

Résumé of paid traffic:

Coastwise: North 1200, South 1795, total	2,995
Transcontinental	1,999
Transpacific	624

("PAC" traffic already included under MK—New York: Sent 41, Recd., 5.)

Total number record—Continued

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland (None)						
ND—Seattle	13	1	72	3	85	4
					85	
LA—Los Angeles (None)						
SX—Los Angeles (FX-SX) (None)						
HU—Honolulu	30	5	59	8	89	
MA—Manila	10	11	1	8	11	19
SH—Shanghai	22	8	17	9	39	17
MJ—Tokyo	96	47	9	35	105	82
MK—New York	112	42	423	63	244	105
CG—Chicago (None)					535	
					535	
Total	283	114	581	126	864	240
Miscellaneous	[1]	[1]	[1]	[1]	[1]	[1]
Total	283	114	581	126	864	240

Total messages of all classes for office:

Total paid messages	864
Total service messages [1]	240
Grand total	1,104

Résumé of paid traffic:

Coastwise: North 85, South 0, total	85
Transcontinental	535
Transpacific	244

("PAC" traffic already included under MK—New York: Sent 0, Recd., 20.)

[1] No record.

Total number record—Continued

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland (Closed)						
FD—Seattle (Closed)						
LA—Los Angeles (Closed)						
SX—Los Angeles (FX-SX) (Closed)						
HU—Honolulu	9	(1)	12	(1)	21	(1)
MA—Manila	5	(1)	13	(1)	18	(1)
SH—Shanghai	1	(1)		(1)	2	(1)
MJ—Tokyo	1	(1)	125	(1)	126	(1)
					167	
MK—New York	23	22	37	13	60	35
CG—Chicago (Closed)						
					60	
Total	39	22	188	13	227	35
Miscellaneous	(1)	(1)	(1)	(1)	(1)	(1)
Total	39	22	188	13	227	35

Total messages of all classes for office:

Total paid messages	227
Total service messages [1]	35
Grand total	262

Résumé of paid traffic:

Coastwise: North ————, South ————, total	
Transcontinental	60
Trans-Pacific	167

("PAC" traffic already included under MK—New York: Sent 42, Recd., 3.)

[1] No record.

Total number record—Continued

1994 OCTOBER 7, 1935.

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	41	0	27	0	68	0
FD—Seattle	17	2	70	6	87	8
					155	
LA—Los Angeles	15	0	135	0	150	
SX—Los Angeles (FX-SX) (none)						
					150	
HU—Honolulu	25	(1)	38	(1)	63	(1)
MA—Manila	22	(1)	19	(1)	41	(1)
SH—Shanghai	16	(1)	0	(1)	16	(1)
MJ—Tokyo	119	(1)	138	(1)	257	(1)
					377	
MK—New York	142	49	333	79	475	128
CG—Chicago (none)						
					475	
Total	392	51	760	85	1,152	136
Miscellaneous	(1)	(1)	(1)	(1)	(1)	(1)
Total	392	51	760	85	1,152	136

("PAC" traffic already included under MK—New York: Sent [1], Recd., [1].)

Total messages of all classes for office:

Total paid messages	1,152
Total service messages [1]	136
Grand total	1,288

Résumé of paid traffic:

Coastwise: North 155, South 150, total	305
Transcontinental	475
Transpacific	377

[1] No record.

Total number record—Continued

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	206	0	110	1	316	1
FD—Seattle	261	30	263	24	524	54
					840	
LA—Los Angeles	718	65	867	75	1,585	140
SX—Los Angeles (FX-SX)	61	10	57	12	118	22
					1,703	
HU—Honolulu	35	(1)	65	(1)	100	(1)
MA—Manila	20	(1)	18	(1)	38	(1)
SH—Shanghai	42	(1)	81	(1)	123	(1)
MJ—Tokyo	128	(1)	121	(1)	249	(1)
					510	
MK—New York	493	75	620	107	1,113	182
CG—Chicago	151	20	110	13	261	33
					1,374	
Total	2,115	200	2,312	232	4,427	432
Miscellaneous	15	5	47	3	62	8
Total	2,130	205	2,359	235	4,489	440

Total messages of all classes for office:

Total paid messages	4,489
Total service messages [1]	440
Grand total	4,929

Résumé of paid traffic:

Coastwise: North 840, South 1703, total	2,543
Transcontinental	1,374
Transpacific	510

("PAC" traffic already included under MK—New York: Sent 5, Recd., 5.)

[1] No record.

Total number record—Continued

1996 OCTOBER 9, 1935.

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	281	8	306	12	587	20
FD—Seattle	256	20	248	21	504	41
					1,091	
LA—Los Angeles	742	74	830	70	1,572	144
SX—Los Angeles (FX-SX)	73	0	88	1	161	1
					1,733	
HU—Honolulu	57	9	79	9	136	18
MA—Manila	20	18	20	18	40	36
SH—Shanghai	49	10	60	14	109	24
MJ—Tokyo	128	36	121	38	249	74
MK—New York	854	120	635	119	1,489	239
CG—Chicago	166	13	153	17	319	30
Total	2,626	308	2,540	319	5,166	627
Miscellaneous	35	3	99	7	134	10
Total	2,661	311	2,639	326	5,300	637

Total messages of all classes for office:

Total paid messages	5,300
Total service messages	637
Grand total	5,937

Résumé of paid traffic:

Coastwise: North 1,091, South 1,733, total	2,824
Transcontinental	1,808
Transpacific	534

("PAC" traffic already included under MK—New York: Sent [illegible], Recd.)

Total number record—Continued

1997 OCTOBER 10, 1935

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	254	39	388	21	642	60
FD—Seattle	217	22	220	25	437	47
					1,079	
LA—Los Angeles	718	80	819	73	1,537	153
SX—Los Angeles (FX-SX)	91	1	89	2	180	3
					1,717	
HU—Honolulu	49	7	72	6	121	13
MA—Manila	18	10	13	15	31	25
SH—Shanghai	52	5	13	6	65	11
MJ—Tokyo	129	35	127	28	256	63
					473	
MK—New York	920	99	597	102	1,517	201
CG—Chicago	186	19	136	24	322	43
Total	2,634	317	2,474	302	5,108	619
Miscellaneous	59	5	131	8	190	13
Total	2,693	322	2,605	310	5,298	632

Total messages of all classes for office:

Total paid messages	5,298
Total service messages	632
Grand total	5,930

Résumé of paid traffic:

Coastwise: North 1079, South 1717, total	2,796
Transcontinental	1,839
Transpacific	473

("PAC" traffic already included under MK—New York: Sent 27, Recd. 2.)

Total number record—Continued

1998 OCTOBER 11, 1935.

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	277	48	353	49	630	97
FD—Seattle	244	29	328	18	572	47
LA—Los Angeles	740	70	769	77	1,509	147
SX—Los Angeles (FX-SX)	97	0	88	1	185	1
HU—Honolulu	52	11	50	10	102	21
MA—Manila	24	19	14	9	38	28
SH—Shanghai	56	5	65	7	121	12
MJ—Tokyo	131	25	148	24	279	49
MK—New York	933	85	646	99	1,579	184
CG—Chicago	184	19	150	19	334	38
					1913	
Total	2,738	311	2,611	313	5,349	624
Miscellaneous	43	7	106	13	149	20
Total	2,781	318	2,717	326	5,498	644

Total messages of all classes for office:

Total paid messages	5,498
Total service messages	644
Grand total	6,142

Résumé of paid traffic:

Coastwise: North 1,202, South 1,694, total	2,896
Transcontinental	1,913
Transpacific	540

("PAC" traffic already included under MK—New York: Sent 36, Recd., 3.)

Total number record—Continued

1999 OCTOBER 12, 1935.

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	184	42	243	38	427	80
FD—Seattle	93	15	102	11	195	26
					622	
LA—Los Angeles	315	54	371	38	686	92
SX—Los Angeles (FX-SX) (Closed, Columbus Day)						
HU—Honolulu	21	3	41	4	62	7
MA—Manila	28	11	8	11	36	22
SH—Shanghai	25	3	41	9	66	12
MJ—Tokyo	153	26	116	21	269	47
					433	
MK—New York	402	57	258	62	660	119
CG—Chicago	70	14	69	19	139	33
					799	
Total	1,291	225	1,249	213	2,540	438
Miscellaneous	21	7	51	11	72	18
Total	1,312	232	1,300	224	2,612	456

Total messages of all classes for office:

Total paid messages	2,612
Total service messages	456
Grand total	3,068

Résumé of paid traffic:

Coastwise: North 622, South 686, total	1,308
Transcontinental	799
Transpacific	433

("PAC" traffic already included under MK—New York: Sent 20, recd. 7.)

Total number record—Continued

2000 OCTOBER 13, 1935.

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland (Closed)						
FD—Seattle (Closed)						
LA—Los Angeles (Closed)						
SX—Los Angeles (FX-SX) (Closed)						
HU—Honolulu	2	2	6	3	8	6
MA—Manila	13	3	0	4	13	7
SH—Shanghai	2	4	3	3	5	7
MJ—Tokyo	47	10	9	8	56	18
					82	
MK—New York	61	21	37	13	98	34
CG—Chicago (Closed)						
Total	87	39	93	33	180	72
Miscellaneous	7	1	40	3	47	4
Total	94	40	133	36	227	76

Total messages of all classes for office:

Total paid messages	227
Total service messages	76
Grand total	303

Résumé of paid traffic:

Coastwise: North———, South———, total Closed.

Transcontinental	98
Transpacific	82

("PAC" traffic already included under MK—New York: Sent 6, recd. 7.)

2001 *Exhibit B–19*

HB, SAN FRANCISCO, CALIF., *October 3, 1934.*

Mr. A. B. LOUDERMILK.
Mr. G. E. PALMER.
Mr. E. H. MARTINELLI.

GENTLEMEN: Following our conference yesterday afternoon, I took up with Mr. Rodman the matter of "lay-offs" for overtime worked during the week by coastwise operators. I am glad to inform you that Mr. Rodman agreed that as long as the overtime is kept at a reasonable minimum, coastwise operators will be paid for time worked instead of being laid off as heretofore has been the practice. This policy will be initiated by me at once.

In regards to the Sunday time worked by all classes of operators, Mr. Rodman has asked me to inform you that he believes your position is well taken, and that he favors the set-up of an additional four hours being paid in addition to the day off during the week as now being practiced; but on account of the far reaching consequences of establishing a precedent of this kind, Mr. Rodman does not feel justified in acting without first conferring with Mr. Tuel.

Mr. Tuel is expected to pay another visit to the Pacific Division the latter part of this month at which time Mr. Rodman will confer with him, and recommend the four hours straight time be authorized.

A. C. J.
A. C. JORGENSEN.

2002 *Exhibit B–20*

[Copy]

FRIDAY, *Nov. 8th, 1935.*

REGULAR MONTHLY PTP MEETING OF THE SAN FRANCISCO LOCAL OF ARTA, 52 CALIFORNIA ST. ? SAN FRANCISCO

Meeting called to order 8 P. M.

Chairman: O. M. Salisbury.

Roll Call: Omitted for obvious reasons; 17 members present.

Salisbury related in detail the events leading up to and during the Mackay strike in New York and his findings from conversations with individual members after his return to San Francisco.

The members individually had expressed the belief to Salisbury that Hatch, McLaughlin, and Burtz had engineered the Secret Meeting in the Bellvue Hotel.

Salisbury had previous informed Burtz that the men felt this way about him, and Burtz had asked for a hearing or a trial to give him a chance to tell his side of the story. Salisbury had promised Burtz this opportunity at this meeting.

Burtz was allowed to speak at length in his own behalf. A good many members got up and told what they had observed and heard,

and what their opinions were (names are omitted for obvious reasons).

Burtz admitted he had helped to arrange this meeting to the extent of calling members on the telephone and to using his car to collect the men for this 2 A. M. meeting, but claimed he thought he was acting in the interest of the men.

The following resolution was submitted by Salisbury and duly seconded: Be it resolved that evidence being introduced and heard both in behalf of and against Brother Burtz, it is hereby resolved that the Mackay Radio Company officials did with intention to dissolve the ARTA PTP Local and dissolve a strike, influence Brother Burtz to participate in the organization of a return to work movement. That said action taken by Bro. Burtz was wrongful and not to the interest of the ARTA, but that such was done by him without realization of consequence while being unintentionally maneuvered as a tool of the Company. Resolution carried unanimously.

M. & S. that in view of the fact that Bro. Burtz has expressed regrets over his activities during the recent Mackay Strike has promised to be a good and loyal member of ARTA in the future and continue with union activities, be it resolved that he be absolved of present charges and be permitted to remain as a member in good standing of ARTA. Carried unanimously.

Meeting went on record as favoring immediate reorganization of this PTP local.

General discussion on prospects of reorganization.

Meeting adjourned 10:30 P. M.

Received Nov. 30, 1935. S. F. Regional Labor Board.

2003 *Exhibit B-21*

SAN FRANCISCO, CALIF., *November 20, 1935.*

1. Q. Do you know of any reason why if you are returned to active duty you cannot give your undivided loyalty and attention to the interests of the Company?

A. No; unless this means that I cannot belong to any labor organization.

2. Q. In your opinion, is the Company unfair or unjust in the treatment it accords its employees?

A. Yes. I think it unfair to discriminate against the men that are locked out as they have as the result of this strike. In Chicago, I think, there has been discrimination against members of ARTA because in every case, members of ARTA have ultimately lost their jobs.

3. Q. In your opinion, is the management of the Company insincere, unreliable, or untrustworthy in its dealings with its employees?

A. To answer truthfully, I would have to say that I was greatly disappointed in results of our negotiations with Mr. Stone in New York. I think that the Company is guilty of certain unfair labor practices under the Wagner Act, outlined in the charges filed with

the Regional Labor Board, San Francisco. I think they have shown a distinct anti-labor attitude.

4. Q. In what particulars, if any, do you believe that the present rates of pay and conditions of employment offered by the Company are unfair or less favorable to its employees than could reasonably be expected in view of the present circumstances of the Company?

A. I think that the Receiving Engineers at Lobitos and Southampton and the Transmitting Engineers at Sayville are grossly underpaid and I think it is reasonable to expect the Company, even in the face of their present circumstances, to adjust those men's salaries.

5. Q. What is your attitude toward the boycott of this Company and certain of its associated companies which has been declared by ARTA, i. e., what justification, if any, is there for the boycott?

A. A labor organization, to my knowledge, has just two weapons after peaceful negotiations fail; one is a strike and the other is a boycott. The justification for the boycott, in my mind, is the fact that quite a number of men were discriminated against when the men were reemployed.

6. Q. If returned to active duty, would you either actively support the boycott or actively oppose it and work for its withdrawal?

A. If all of us were returned to work, I would oppose it and work for its withdrawal. If returned to work as an individual, I would neither support it or oppose it.

7. Q. In your opinion, is it the paramount duty of all employees of the Company to do everything possible to increase the business of the Company and to render satisfactory service to the public?

A. Yes. I have always followed this practice and have at times obtained accounts for the Company.

O. M. SALISBURY,
HB Operator, Class A.

2004 *Exhibit B–22*

MACKAY RADIO AND TELEGRAPH COMPANY,
22 BATTERY STREET,
San Francisco, October 17, 1935.

Mr. R. G. WAGENET, *Regional Director,*
National Labor Relations Board,
1095 Market Street, San Francisco, California.

DEAR SIR: We have for acknowledgment your letter dated October 16, 1935. It appears to us that the charges filed by the American Radio Telegraphists' Association are at variance with the actual facts for the following reasons:

1. The men named in your letter, A. B. Loudermilk, P. D. Phelps, L. K. Bash, L. N. Rone and G. E. Palmer were not discharged.

2. They left their positions of their own volition and when they later signified their desire to return to work, applications for reinstatement were accepted from each man.

3. The reason they were not reinstated at the time they made application was that no vacancies existed at that time.

A strike of some of our radio operators was called by the New York office of the American Radio Telegraphists' Association on the evening of October 4 to take effect at midnight PST the same night. The strike was only partially effective because the majority of our operators in the various cities of the United States where we have offices did not go on strike.

On the morning of October 8, starting at about 6 a. m., the majority of the employees in our San Francisco operating room returned to work. Applications for reinstatement from each of these employees were accepted and were favorably acted upon to fill all vacancies then existing.

2005 Mr. Loudermilk did not apply for reinstatement until approximately 9 p. m. on October 8 and as the strike was officially terminated by the American Radio Telegraphists' Association New York office at 10:15 a. m. PST October 8, it will be seen that it was 15 hours after the men started to return to work and about 11 hours after the strike was officially terminated before Mr. Loudermilk applied for reinstatement. All vacancies had been filled in the meantime by our own employees.

Our records show that Mr. Phelps made application for reinstatement at about 3:30 p. m. on October 8. This was more than 5 hours after the strike had been officially terminated. No vacancy existed.

Mr. Bash did not apply for reinstatement until about 10:30 a. m. October 9. This was the day after the strike had been officially terminated. No vacancy existed.

Mr. Rone did not apply for reinstatement until about 3:30 p. m. October 9. This was the day after the strike had been terminated. No vacancy existed.

Mr. Palmer did not apply for reinstatement until about 9 p. m. October 8. This was nearly 11 hours after the strike had been officially terminated. No vacancy existed.

Should you desire additional information we shall be very glad to cooperate with your board to the fullest extent.

Respectfully yours,

H. L. RODMAN,
General Superintendent.

Received Oct. 18, 1935. S. F. Regional Labor Board.

2006 *Exhibit B–6*

POSTAL TELEGRAPH CABLE COMPANY

67 Broad Street, New York City

PERSONAL HISTORY RECORD

Present address, 45 Lagoma, Mill Valley. In emergency notify Mrs. L. K. Bash, tel. MV 925–J, address, same. Relation, wife. *45 Lagoma, Mill Valley, tel. MV 925–J.* Sex, male; race, white; mar-

ried. No. of dependents, full, 3; partial, 5. Relationship, wife and son. Citizen of: U. S. Name, Leo Keith Bash. Birth: July 13, 1901. Birthplace: Kenton, Ohio. Height, 5′ 11″. Weight, 210. Have you been employed in this company before? If so give location, San Francisco; from 1925 to 1935. Have you any relatives in this company? No.

EDUCATION

Name and location of schools attended	Date started	Date left	Did you graduate?	Courses taken and degrees
Grammar school: Kenton, Ohio	1910	1914	Yes	Prescribed.
High school: Kenton, Ohio	1915	1918	No	Prescribed.

Languages: Latin, Spanish, speak slight; read, slight; write, slight. Have you served in any branch of U. S. military or naval service? Yes. If so, state branch, Signal Corps. Period of service from 1919 to 1926. Class of service. Are you a member of any reserve branch of military or naval service? No.

PREVIOUS EMPLOYMENT

Name and address of previous employers (List in consecutive order—Last employer first)	Position	Date started	Date left	Salary	Reason for leaving
U. S. Air Mail Serv., Reno-Elko, Nev.	Radio opr.	June 1923	Sept. 1923	150	Resigned.
Mackay Radio & Tel. Co., San Francisco	Radio opr.	1937	1935	180	

Signature of applicant,

L. K. BASH.

2007 SAN FRANCISCO, CALIFORNIA, *October 9, 1935.*

To Mr. A. C. Jorgensen, Traffic Manager, HB.
From L. K. Bash.

Confirming my verbal application to you about 1030 AM, October 9th, please reinstate me in the HB Operating Force in my former position as Class A Operator.

My personal history record is attached.

(sgd) L. K. BASH.

To Capt. E. H. Dodd.
From A. C. Jorgensen.

This application for employment, together with a number of others which are being forwarded at the same time, is subject to final approval by Mr. E. W. Stone, Operating Vice President.

There are no vacancies in the HB Operating force at present, and there were no vacancies at the time the applicant made his verbal application to me.

A. C. J.
A. C. JORGENSEN.

2008 INTER-OFFICE MEMORANDUM

OCTOBER 14, 1935.
[0221 Air Mail]

To Mr. Ellery W. Stone.
From H. L. Rodman. .
Subject L. K. Bash—Request for reinstatement.

Forwarded.

In view of the fact that no vacancies now exist in the HB Operating Force, it is not recommended that Mr. Bash be employed as requested by him.

It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the HB Operating Room.

Enclosure.

H. L. R.

OCTOBER 26, 1935.

To H. L. Rodman.
From Ellery W. Stone.

Returned.

Your recommendation is approved and there is no objection to favorable consideration being given this application when a vacancy occurs at San Francisco.

E. W. S.

2009 OCTOBER 12, 1935.

To Mr. H. L. Rodman.
From E. H. Dodd.

Forwarded.

In view of the fact that no vacancies now exist in the HB Operating Force, it is not recommended that Mr. Bash be employed as requested by him.

It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the HB Operating Room.

E. H. DODD.

Enc.

2010 *Exhibit B 7*

SAN FRANCISCO, CALIF., *October 14, 1935.*

DEAR MR. RODMAN: I have just given Mr. Dewey my application for reinstatement at FX together with some very fine letters from customer-friends who have known me for a long time and know exactly what my attitude was during the strike.

I ran into a series of unfortunate meetings with you during this time—two, to be exact. On neither occasion did I attempt to justify

myself, hence this letter. I trust that it will be received and considered in the same spirit in which it is written and transmitted.

On the occasion when you found me at FX, I was not there to injure you nor the company. Instead, I answered every call that came in while I was present and in every instance explained to the customer that service was temporarily disrupted and begged their indulgence for the duration of the interruption.

When I opened Captain Dodd's door that afternoon it was because I had a half-way appointment with him for 3:00 P. M. I had no desire nor intention to pester you nor to force an interview. At the same time, I did not wish to put the "skipper" on the spot. Instead, I withdrew without a word.

I believe I owe it to myself to say to you that I have not at any time been in sympathy with the strike talk. I made frequent efforts to counsel the boys against such action. But when every last man in HB went out, including the supervisors, they demanded that I declare myself. I agreed to "picket" FX in order to keep others from doing so. I sent at least six "pickets" away.

Many of those who have submitted letters in my behalf are asking me what the outcome is, or will be. Others will, they tell me, withdraw their file in my favor. To every such statement, I have asked that they take no such action as I feel that it would do me no good whatever, and would further injure Mackay Radio, which I have no desire to do. I am not in sympathy with the international boycott against Mackay that is now being called.

I like Mackay Radio; I like the work at FX because I am peculiarly fitted for it. It is my honest opinion that I can do you more good there than I can walking the streets or working for a competitor. In view of my frankness to you, I hope that you will grant me a few minutes in which to answer any questions you may care to ask, and at the same time further prosecute my case. Please do not think me be'li*g*gerent nor resentful. I am anything but that. Always a mild-mannered person, I see no reason for "blowing up" at this late date.

I feel confident that a review of the Facts in my case will surprise you—favorably.

Sincerely yours,

P. D. PHELPS.

2011 *Exhibit B–8*

OCT. 16, 1935.
[10SF51]

Mr. H. L. RODMAN.
F. L. DEWEY.

Application for Reinstatement—P. D. Phelps

I hand you herewith application for reinstatement by Mr. Phelps.

The time element shown in this formal application is about 3:30 P. M. October 8th. I also attach another letter of October 15th indicating that Mr. Phelps made several efforts to contact me earlier

in the morning of the same date, which, in effect, advances the time to early in the morning of October 8th.

The several letters from prominent brokers, which are attached, indicate that Mr. Phelps has quite a following in the Stock and Bond business. His services as a contact man and as an operator have always been of a high order; however, I have explained to him that his position has been filled by an employee from New York and that it is now a matter which will have to be taken up through the routine channels for final disposition.

Received, Oct. 29, 1935. S. F. Regional Labor Board.

2012 *Exhibit B–9*

SAN FRANCISCO STOCK EXCHANGE,
155 SANSOME STREET,
San Francisco, October 8, 1935.

Mr. F. L. DEWEY,
Mackay Radio System, 470 Market Street,
San Francisco, California.

DEAR SIR: I am writing you on behalf of Mr. P. D. Phelps. While I would not presume to interfere with your arrangements with your employees, I feel that I must say a word in commendation of him.

He is keen, alert, courteous and active in his duties. He is valuable to the San Francisco Stock Exchange and I feel that he must be a decided asset to your Company in his present position.

Very truly yours,

F. C. SHAUGHNESSY,
F. C. Shaughnessy,
President.

Received Oct. 15, 1935. S. F. Regional Labor Board.

2013 *Exhibit B–10*

OCT. 15, 1935.

Mr. F. L. DEWEY,
City Manager, Mackay Radio & Telegraph Co.,
22 Battery Street, San Francisco, Calif.

DEAR SIR: This is to certify that during the time that I have been in contact with Mr. P. D. Phelps, Chief operator of the Mackay Radio office in the San Francisco Stock Exchange, he has always been most courteous and has handled my wires and cables in a most efficient manner. He has been accommodating at all times and has kept me advised in all phases of your system.

During the recent operators' strike, I personally heard Mr. Phelps advise clients of the interruption of service of your system and asked them to kindly send the messages to the Postal Telegraph Company.

Trusting that this letter, in connection with the letter written by Mr. Frank C. Shaughnessy, President of the Exchange may aid in assisting Mr. Phelps to re-instatement, I am

Sincerely yours,

M. G. SORICH, *Manager*,
Clearing House, San Francisco Stock Exchange.

MGS:T.

Received Oct. 29, 1935. S. F. Regional Labor Board.

Board's Exhibit No. 11, marked for identification. Board's Exhibit No. 12, marked for identification.

2014 *Exhibit B–13*

OCTOBER 17TH, 1935.

Mr. H. L. RODMAN,
General Superintendent Mackay Telegraph Company of California.

We the employees of the San Francisco office of the Mackay Radio Telegraph Company of California, as individuals and as a group, herewith renounce any and all affiliation with the ARTA in so far as they are empowered to act for us and negotiate any contracts on our behalf, as employees of the Mackay Radio Telegraph Company of California, disavow any member, official, delegate, or committee seeking to act as spokesman for any employee or group of employees in the point to point service of this company.

We do maintain the right to elect a member of this office or a group of employees of this office to represent us with any grievances which we may have with the management, and ask the right to present our grievances to the management as we feel they should be presented, not as members of the ARTA, but as a representative group of employees of the Mackay Radio Telegraph Company.

A. M. McLaughlin, J. M. McKercher, P. F. Horstmeyer, Wm. J. Kane, O. C. Belding, A. J. Stocklin, J. V. Buckley, J. L. Layman, C. C. Williams, John Spanover, J. L. Irish, R. I. Hatch, H. J. Pey, L. E. Spencer (Black), A. Munroe, Duane G. Senseman, J. R. Mohler, Wm. C. Adams, C. J. Frear, C. R. Burtz, Wm. J. Benn, R. D. Wilson, J. P. Foley, N. C. Hoxie, H. B. Marky, E. B. Barlow, R. C. Henning, Russell L. McClure, W. J. Greene, J. M.
2015 Olson, A. F. Beebee, P. A. Stevens, R. I. Sayers, K. R. Bartlett, M. F. York, W. F. Hart, E. R. Bevitt, T. A. Toppi, E. B. Cole, T. M. Humphrys, H. Mulligan, O. P. Parker, R. P. Clifford, J. J. Ludlam, F. Rossbach, Robert J. Woolverton, G. D. Kermickel, S. A. York, E. L. Barber, J. A. Benn, C. A. Jones, P. E. Dwyer, A. N. Chambers, J. Butols, Merle Davis, H. MacIntyre, F. E. Schmiedecke, E. A. Armanim, R. Shackelford, H. C. King, R. W. White, M. A. Fryes.

2016 *Exhibit B–14*

[Radiogram]

JULY 5, 1935.

Do you favor strike action to obtain a suitable wage and working agreement for all employees of the Mackay Radio and Telegraph Company.

—X—Yes ——No.

R. I. HATCH,
Signature, Card #—

2017 Board's Exhibit No. 15 marked for identification.

2018 *Exhibit B–16*

OPERATORS' OFFICE SENIORITY

(According to class and circuits)

TRANSCONTINENTAL—TRANSPACIFIC

Class A		Class B	
New York:		Barlow	July 15, 1934
Rone	July 1, 1934	Patterson	Aug. 15, "
Palmer	" 1, "	Benson	Oct. 15, "
Cookson	" 1, "	Kane	Nov. 16, "
Burtz	" 1, "	Bartlett	Dec. 1, "
Salisbury	" 1, "		
Loudermilk	" 1, "		
Barber	" 1, "		
Kermickel	" 15, "		
Shanghai:			
Benn, J. A	" 1, "		
Poy	" 1, "		
Horstmeyer	Nov. 4, "		
Adams	Apr. 15, 1935		
Tokio:			
Harrison	July 1, 1934		
Williams	Oct. 15, "		
Belding	Nov. 15, "		
MA-HU:			
Bash	July 15, "		
Frye	" 15, "	Foley	July 15, 1934
Chicago:			
Ludlam	July 15, "	Humphrey	July 1, 1934
Stocklin	" 15, "	Frear	Sept. 2, "

COASTWISE

Class C		Class D	
Irish	July 15, 1934	Jones	Aug. 1, 1934
Marks	" 15, "	Parker, O. P	" 1, "
Spanover	" 15, "	Chambers	Jul. 7, "
Bevitt	" 15, "	Sayers	Oct. 1, "
Wescott	" 15, "	Greene	" 1, "
King, J	" 15, "	Stoughton	" 1, "
Murphy	" 15, "	Beebee	Mar. 1, "
Martinelli	" 15, "	Part-time:	
Parker, C. V	Jan. 15, 1935	Mulligan.	
Clifford	Apr. 1, "	Stevens.	

2019 *Exhibit B–17*

OPERATORS TIME SHEET

TUESDAY, OCT. 1933.

Operator	On	Out	Lunch	In	Due off	Off	Et	Remarks
Jones	6:00	8:00			8:00 A.			Worked 2:00 hours.
Mullizan	5:00 A.				1:30 P.			Absent (sick).
Chambers	6:00 A. M.	10:30	½	11	2:30 P.	2:30 P.		
O. P. Parker	9 A. M.	1 P.	½	1:30 P.	5:30 P.	9 P.	3. 50	
Marks	7:30 A.	11:30 A.	½	12	4 P.	4:30 P.	. 50	
Clifford	11:15	1:05 P.	½	1:35 P.	7:45 P.	8:30 P.	. 75	
Irish	8:00	1 P.	½	1:30 P.	4:30 P.	5:30 P.	1. 00	
Bevitt	9:00 A.	12:30 P.	½	1 P.	5:30 P.	5:30 P.		
Murphy	9:00 A.				5:30 P.			Absent (informed me sick when reported in person in afternoon—assigned regular trick for tomorrow).
C. V. Parker	6A.	11:30	½	12	2:30 P.	4:15	1. 75	
Stevens	9:00 A.	11	½	11:30	5:30 P.	8 P.	2. 50	
Sayers	9:00 A.	12:50	½	1:20 P.	5:30 P.	9:00	3. 50	
Greene	6 A.M.	12	½	12:30	2:30 P.	4 P.	1. 50	
Toppi	11:00 A.	2:30	1	3:30	8:00 P.	8:30 P.	. 50	
Hardin	11:00 A.				9:00 P.			Absent.
Stoughton	9:30 A.	1:30 P.	½	2 P.	6:00 P.			
York	6 A.	11:30	½	12	2:30 P.	4:30 P.	2. 00	
McLaughlin	6 A.	9:30					3. 30	
Mohler	10:15 A.M.				5 P.		5. 45	
Layman	6 A.	8 A.			4 P.		2. 00	
Buckley	6 A.	8 A.			4 P.	4:45 P.	2. 75	
2020 Bartlett	Mid.		½		8:00 A.			Absent, informed me would be at work regular hour.
Kane	10:30 A. Mid.				2:00 P.	2 P.		Worked 3½ hours.
Barber	6:00.	11:00 A.	½	11:30.	2:00 P.	4:00.	2. 00	
Burtz	6:00.	12:00.	½	12:30.	2:00 P.	4 P.	2. 00	
Foley	6:00 A.	12:30.		4.		Mid.	6. 50	
Benson	4:00 P.				Mid.			
Beebe	6:00.	7:40 A.		4:20 P.			1. 25	
Barlow	4:00.				Mid.			
Patterson	6 A. M.	10:30 A.		4.	Mid.		4. 50	
Stocklin	9:00.	12:30.	½	1 P.	5:00 P.	7:30.	2. 50	
Ludlan	10:00 A.	1 P.	½	1:30.	6:00 P.	4:00.		Worked 6 hours.
Humphrey	10:15A.M.	2:30.		3 P.	6:15 P.	9:00 P.	2. 75	
Frye	Mid.				8:00 A.			Unworked (sick).
Horstmeyer	6 A.	Off.			8:00 A.			Worked 2 hours.
Poy	8:00 A.	12.	½	12:30.	4:00 P.	4 P.		
Benn	4:00 P.				Mid.	Mid.		
Belding	6 A. M.			Off.	8:00 A.			Worked 2 hours.
Kermickel	10:30 A.	11:30.		12.	4:00 P.	4 P.		Worked 5:50.
Frear	4:00 P.	6:15 P.	½	6:45 P.	Mid.	Mid.		
Adams	6 A.	10:30.	½	11.	2 P.	4 P.	2. 00	Relief, self.
White	10:00 P.				6 A.			
Senseman	10:00 P.				6 A.			
2021 Dwyer	6 A. M.		½			8 A. M.		Worked 2:00 hours.
Woolverton	6:00 A.	10:30.		11.	2:30 P.	2:30 P.		
Rossbach	8:00 A.	11.	½	11:30.	4:00 P.	4 P.		
Bertoli	8:30.	12.	½	12:30.	4:30 P.	4:30 P.		
Olson	6:00.	11:30.	½	12.		8:30.	6. 50	
Kroll	9:30 A.		1		6:30 P.			Absent. Called at 2 P. M. permitted to show up regular time tomorrow.
W. Benn	9:00 A.	12:45.	½	1:15.	5:30 P.	5:30 P.		
McClure	6 A. M.	12.	½	12:30.	6:00 P.	4 p.	2. 00	
Sairo	9:45 A.	1:30.	.75	2:15.	6:30 P.	6:30 P.		
Armanini	6 A. M.	9:45 A.		4.	Mid.	Mid.		
King	4:00 P.	6:00	½	6:30.	Mid.	Mid.		
Schmidecke	10:15 A.	1 P.	½	2 P.	6:45.	8:15 P.	1. 50	
Merle Davis	8:30 A.	12:30 p.	1	1:30.	5:30 P.	5:30 P.		

2022 *Exhibit B-18*

DECEMBER 1, 1935.

Stipulation No. 1

The Mackay Radio & Telegraph Company, a California corporation, hereby enters into the following stipulation with the National Labor Relations Board:

Whereas, Mackay Radio & Telegraph Company has furnished the National Labor Relations Board with a record of radio messages handled by HB station (San Francisco, California) during the period October 1, 1935, to October 13, 1935, inclusive, is hereby stipulated and agreed as follows: that said record is believed by said company to be a true and accurate compilation of all entries made during said period in the books of original entry in which all radio messages transmitted and/or received by said HB station are customarily entered; that said original entries were made in the regular course of business by persons duly authorized thereunto by said company; that said summary shall be deemed competent evidence of the matters contained in said books of original entry and set forth in said summary, to the same extent as said books of original entry would be competent evidence.

MACKAY RADIO & TELEGRAPH COMPANY.
By J. HAROLD MERRICK.
BERTRAM EDISES.
Attorney for National Labor Relations Board,
Twentieth Region.

2023 TOTAL NUMBER RECORD

HB—San Francisco, California, *October 1, 1935.*

Point	Sent		Recd.		Total	
	Paid	Svc.	Paid	Svc.	Paid	Svc.
ND—Portland	251	23	388	33	639	56
FD—Seattle	242	35	286	24	528	59
					1,167	
LA—Los Angeles	734	72	852	76	1,586	148
SX—Los Angeles (FX-SX)	65	0	52	1	117	1
					1,703	
HU—Honolulu	50	8	55	11	105	19
MA—Manila	41	11	12	13	53	24
SH—Shanghai	35	7	40	11	75	18
MJ—Tokyo	147	34	138	32	285	66
MK—New York	968	99	667	97	1,635	196
CG—Chicago	164	20	129	13	293	33
					1928	
Total	2,697	309	2,619	311	5,316	620
Miscellaneous	50	14	133	9	183	23
Total	2,747	323	2,752	320	5,499	643

Total messages of all classes for office:
Total paid messages 5,499
Total service messages 643
Grand total 6,142
Résumé of paid traffic:
Coastwise: North 1,167, South 1,703, total 2,870
Transcontinental 1,928
Transpacific 518
("PAC" traffic already included under MK—New York: Sent 32, Recd. 5.)

2024 *Exhibit R–1*

In the District Court of the United States for the District of Oregon

12810. Indictment for Violation of the Tariff Act of 1922

United States of America

vs.

Lon Rone, John Satterwhite, Howard Wise, and Eugene Salvo
DEFENDANTS

United States of America,
District of Oregon, ss.

The Grand Jurors of the United States of America, for the District of Oregon, duly impaneled, sworn, and charged to inquire within and for said District, upon their oaths and affirmations, do find, charge, allege, and present:

That Lon Rone, John Satterwhite, Howard Wise, and Eugene Salvo, the defendants above-named, on or about the 9th day of July 1929, the exact date being to the Grand Jurors unknown, at Port-

land, in the State and District of Oregon, and within the jurisdiction of this Court then and there being and acting together, did unlawfully, wilfully, feloniously, fraudulently, and knowingly receive and conceal certain merchandise, to-wit: One thousand cans of vodka, which said merchandise aforesaid had theretofore been unlawfully imported and brought into the United States from a foreign country, to-wit: China, in that the said merchandise had been theretofore imported and brought into the United States from said foreign country without the same having been declared to any customs or other officer of the United States, and without any duty having been paid thereon as required by law, the said defendants and each of them then and there well knowing the said merchandise to have been so unlawfully brought into the United States; contrary to the form of the statute in such case made and provided and against the peace and
2025 dignity of the United States of America.

Dated at Portland, Oregon, this 26th day of July 1929.

A true bill.

HENRY C. THOMPSON,
Foreman, United States Grand Jury.
GEORGE NEUNER,
United States Attorney.
J. W. MCCULLOCH,
Assistant United States Attorney.

(Endorsed:) A true bill. Henry C. Thompson, Foreman Grand Jury. Filed July 26, 1929. G. H. Marsh, Clerk.

In the District Court of the United States for the District of Oregon

Be it remembered, that on Thursday, the 1st day of August 1929, the same being the 23rd Judicial day of the Regular July Term of said Court, the following proceedings, among others, were had before the Honorable John H. McNary, United States District Judge, for said District, to wit:

2026 UNITED STATES OF AMERICA

vs.

LON RONE, ET AL.

No. C–12810. August 1, 1929

Indictment: Tariff Act of 1922

Now at this day come plaintiff by Mr. J. W. McCulloch, Assistant United States Attorney, and the defendant Lon Rone above named in his own proper person. Whereupon the said defendant in open court retracts his plea of not guilty heretofore entered to the indictment herein, and for plea thereto, says that he is guilty as charged therein. And upon motion of plaintiff for judgment upon said plea,

It is adjudged that said defendant do pay a fine of $500.00, and that he be imprisoned for a term of six months, and

It is ordered until otherwise ordered or provided that this sentence of imprisonment be executed in the county jail of Multnomah County, Oregon, and that he stand committed until this sentence be performed or until he be otherwise discharged according to law.

2027 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, G. H. Marsh, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing copy of Indictment and Record of Sentence, in cause No. C–12810, in the matter of United States vs. Lon Rone, et al., has been by me compared with the original thereof, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 29th day of November 1935.

[SEAL] G. H. MARSH, *Clerk.*
By L. I. ROGERS, *Deputy Clerk.*

2028 *Exhibit R–2*

[Copy]

AMERICAN RADIO TELEGRAPHISTS ASSOCIATION, INC.,
52 California Street,
San Francisco, California, February 8, 1935.

Mr. H. L. RODMAN,
General Superintendent,
Mackay Radio & Telegraph Company,
22 Battery St., San Francisco, Calif.

DEAR SIR: This is to inform you that under the terms of ARTA's constitution, Article V, Section (4), Mr. A. B. Loudermilk can no longer be considered a member of good standing of this Association.

Please be advised that any commitments, promises, proposals or negotiations instigated or supported by Mr. Loudermilk are not binding upon this Association in any way. Mr. Loudermilk has at no time been a duly elected or accredited representative of this Association. In his present status he cannot legally be a candidate for the office of National Executive Committeeman.

Very truly yours,

(Signed) ROY A. PYLE,
Acting Secretary S. F. Local, ARTA.

cc Loudermilk
file

2029 *Exhibit R–3*

INTER-OFFICE MEMORANDUM

OCTOBER 14, 1935.
[0219 Air Mail]

To Mr. Ellery W. Stone.
From H. L. Rodman.
Subject A. B. Loudermilk—Application for Reemployment

Forwarded.

In view of the fact that no vacancies now exist in the HB Operating Force, it is not recommended that Mr. Loudermilk be employed as requested by him.

It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the HB Operating Room.

Enclosure.

H. L. R.

OCTOBER 26, 1935.

To H. L. Rodman.
From Ellery W. Stone.

Returned.

Your recommendation is approved and there is no objection to favorable consideration being given this application when a vacancy occurs at San Francisco.

E. W. S.

Received Oct. 28, 1935. Mackay Radio & Tel. Co.

2030 OCTOBER 12, 1935.

To Mr. H. L. Rodman.
From E. H. Dodd.

Forwarded.

In view of the fact that no vacancies now exist in the HB Operating Force, it is not recommended that Mr. Loudermilk be employed as requested by him.

It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the HB Operating Room.

E. H. DODD.

Enc.

2031 SAN FRANCISCO, CALIFORNIA, *October 8, 1935.*

To Mr. A. C. Jorgensen,
Traffic Manager, HB
From A. B. Loudermilk.

Confirming my verbal application to you about 9 P. M., October 8th, please reinstate me in the HB Operating Force in my former position as Class A Operator.

My personal history record is attached.

(sgd) A. B. LOUDERMILK.

To Capt. E. H. Dodd.
From A. C. Jorgensen.

This application for employment, together with a number of others, which are being forwarded at the same time, is subject to final approval by Mr. E. W. Stone, Operating Vice-President.

There are no vacancies in the HB Operating force at present, and there were no vacancies at the time the applicant made his verbal application to me.

A. C. J.
A. C. JORGENSEN.

2032 POSTAL TELEGRAPH CABLE COMPANY

67 Broad Street, New York City

PERSONAL HISTORY RECORD

Present address 835 Bush St., Apt. 2, San Francisco. Tel. No. None. In emergency notify Mrs. E. Anderson, address San Pedro, Calif. Sex, male; race, white; divorced. No. of dependents, full, 1; relationship, son. Citizen of U. S. A. Name, Alonzo Bennett Loudermilk. Birth, July 2nd, 1902. Birthplace, Petaluma, Calif. Height, 6′. Weight, 205. Indicate any physical defects, None. Have you been employed in this company before? If so give location, San Francisco, from Dec. 1933 to Oct. 1935. Have you any relatives in this company? No.

EDUCATION

Name and location of schools attended	Date started	Date left	Did you graduate?	Courses taken and degrees
Grammar school: William Land, Sacramento	------	------	Yes	
High school: Sacramento High, Sacramento	------	------	No	
College or technical school: Great Lakes, U. S. Naval Radio School.	------	------	Yes	Radioman 3rd class.

Languages: Spanish, speak slight; read slight; write slight. Have you served in any branch of U. S. military or naval service? Yes. If so, state branch, Navy. Period of service from 1919 to 1921; class of service, radio.

PREVIOUS EMPLOYMENT

Name and address of previous employers (list in consecutive order—last employer first)	Position	Date started	Date left	Salary	Reason for leaving
Mackay Radio and Telegraph Co., San Francisco	Operator	1933	1935	$180	
Real Silk Hosiery Co., San Francisco	Salesman	1931	1933	Comm.	Resigned.
Radio Corporation of America San Francisco	Operator	1923	1930		Resigned.

Signature of applicant:

A. B. LOUDERMILK.

2033 *Exhibit R-4*

BOYCOTT MACKAY RADIO

The recent strike called against the Mackay Radio and Telegraph Company by the American Radio Telegraphists' Association (ARTA) resulted in twenty-three of your brother radio operators being locked out of their jobs. The actions of the Mackay Company, during and after the strike, have been so discriminatory and unfair that three charges of violation of fair labor practices have been made against Mackay. The U. S. Government is now vigorously prosecuting these charges.

The ARTA, the Maritime Federation of the Pacific Coast, and approximately fifty labor organizations have declared a BOYCOTT against *Mackay Radio*, *Postal Telegraph*, *All America Cables*, *Commercial Cables* and all companies owned or controlled by the International Telephone and Telegraph Company.

All marine radio operators are urgently requested to Refrain From Sending Any Radio Messages to Any Mackay Radio Station. Mackay owns or controls the following coastal radio stations: WSL, WSE, WSF, WAG, WMR, KEK, KFS, and KOK.

If you Must send traffic to a Mackay station, use KFS or WSL as there are no scabs employed at these stations. KEK, KOK, WSE, and WSF are known to be manned by scabs. The boycott will continue until Mackay signs a suitable agreement with ARTA.

Please advise all the ship operators that you contact, especially those on foreign ships, of this Boycott and request their cooperation.

Ask your shipmates, family, and friends to refrain from using Postal Telegraph. Help your locked-out brothers—Boycott Mackay Radio.

Mackay Radio and Postal Telegraph are Unfair to Organized Labor.

Issued by a group of Members of the ARTA.

2034 *Exhibit R–5*

(Outside back cover)

BOYCOTT MACKAY!

WMR, Jupiter, Fla.: KOK, Clearwater, Calif.; KFS, Palo Alto, Calif.; KEK, Hillsboro, Ore.; WAG, Thomaston, Me.; WSF, New York, N. Y.; WSL, Sayville, L. I.; WSE, Amagansett, L. I.

Start, Spread and Keep up a Vigorous Boycott Until Mackay Radio Enters Into an Agreement With the American Radio Telegraphists Association. Boycott Mackay Into Reinstating its Blacklisted Employees!

Send Your Message via RCA, Western Union, and Globe—Boycott Mackay!

Addresses of Locals and Delegates

Symbols: (a) Airways, (b) Broadcast, (m) Marine, (p) Point-to-Point.

Baltimore, Md. (a, b, m, p): Paul Rothman, ARTA, Stewart Bldg., Gay & Lombard Sts. Tel. Plaza 3091.

Beaumont, Texas (b, m): C. B. Trevey, P. O. Box 3311.

Boston, Mass. (a, b, m, p): Richard J. Golden, ARTA, 344 Atlantic Avenue. Tel. Liberty 9857.

Buffalo, N. Y. (a, b): C. W. Mason, 75 Tyler St.

Cleveland, Ohio (a, b, m): Richard Miller, 1384 Gladys Ave, Lakewood, Ohio. Tel. LAKewood 6671–M.

Columbus, Ohio (b): C. W. Bischoff, 423 Oakwood Avenue.

Denver, Colo. (b): R. E. Sargent, 3171 West 38th Avenue.

Garden City, L. I. (p): J. Marcroft, 13 Raymond Court.

Half Moon Bay, Calif. (p): Lyle S. Henderson, % Mackay Radio Tel. Co.

Hartford, Conn. (b): F. G. Edwards, 71 Birch St., Manchester, Conn.

Honolulu, T. H. (p): J. T. Landis, Box 16, Waialua, Oahu, T. H.

Manchester, Conn. (b): F. G. Edwards, 71 Birch St.

Miami, Fla. (a, b, m, p): Alex Vadas, P. O. Box 1830.

New Orleans, La. (a, b, m, p): J. E. Croney, ARTA, Room 608, Godchaux Bldg., Canal St.

New York, N. Y. (a, b, m, p): Frank W. Robinson, ARTA, 10 Bridge St. Tel. BOwling Green 9–4398.

Orlando, Fla. (b): W. Donald Thomas, WBDO Studio Fort Gatlin Hotel.

Palo Alto, Calif. (p): Buell Nesbett, 443 Kipling St.

Philadelphia, Pa. (a, b, m): Mort Borow, 6600 Leeds Street. Tel. Greenwood 9853.

Pittsburgh, Pa. (b): F. R. Thomas, 1120 Alleghany Ave. Tel. FAirfax 4064.

Portland, Maine (b): A. W. Moser, 193 Pleasant Ave.

Portland, Ore. (b): Charles A. Baker, Suite 620–22, Lumbermans Bldg., 5th and Stark Sts.; (p) . . . Earl K. Swanson, 1849 SW. Park Avenue; (a. m.) . . . K. C. Krolek, Room 158, Security Bldg.

Rochester, N. Y. (b): G. H. Hall, 104 Hampden Road.

San Diego, Calif. (b, m): Harold W. Hasenbeck, 3636 Central St.

San Francisco, Calif. (a, b, m, p): Mervyn Rathborne, ARTA, 52 California St. Tel. Sutter 0752.

Seattle, Wash. (a, m. p): T. J. VanErmen, Room 310, Pioneer Bldg., 1st Ave and James Street; (b) T. Pringle, National Delegate, % ARTA, Room 310, Pioneer Bldg., Seattle, Wash.

Shenandoah, Iowa (b): Blair E. Dobbins, 212 Sycamore.

South San Francisco, Calif. (p): James B. McPherson, 520 Pine Terrace.

Southern California Local No. 7: Headquarters, 326½ Avalon Blvd., Wilmington, Calif.; C. H. Jordan, Southern Calif. Rep.

Southern California Broadcast Division: Al. Dahlstrum, Broadcast Committeeman, 2221 So. Hoover St., Los Angeles, Calif.

S. C. Point-to-Point and Airways Division: A. F. Hazel, Committeeman, 2221 So. Hoover St., Los Angeles, Calif.

Tampa, Fla. (b, m): George C. Warner, Jr., Box 1187, WPD, Municipal Terminal.

Utica, N. Y. (b): L. W. Briggs, 503 Plant Street.

Worcester, Mass. (b): C. B. Kelley, 19 McKinley Road.

2035 *Exhibit R–6*

SAN FRANCISCO, CALIF., *October 15, 1935.*

Mr. F. L. DEWEY,
Manager, Metropolitan District,
Mackay Radio & Tel. Co., San Francisco.

DEAR MR. DEWEY: Supplementing my application for reinstatement as Branch Manager at the Stock Exchange, I wish to call attention to the fact that the reason I gave the time as 3:30 P. M., October 8, is because that was the earliest possible moment at which I was able to contact you, although I called up early that morning and came downtown as soon as I could get dressed.

Arriving at the office I found Miss Nelson on the switchboard and asked her if you were in. To this she replied in the negative. Nor did she know your whereabouts. I remained in the outer office nearly all morning, finally contacting Captain Dodd who suggested that I come back around one o'clock. I did this and Captain Dodd said that he still knew nothing of my status and to return about 3:00 P. M. Further inquiry at the switchboard revealed nothing of your whereabouts.

About 3:20 or 3:25 I was told that you had gone to the Stock Exchange with Mr. Lee and Miss Nelson. It is there at the time mentioned in my application that I was first able to contact you.

Let me point out, also, that at 7:00 A. M. when I learned for the first time that the strike was over that I made an effort to return to

work but found that Mr. Rodman's instructions to Stock Exchange officials had not been rescinded and my entrance was barred from FX.

This whole unfortunate affair is a series of errors. I, for my part, am thoroughly ashamed of my part in the mess and have certainly learned my lesson. (I know they will all say that, but I mean it.) The group who waited on me Saturday afternoon, October 5, were striking operators and longshore workers. I seldom come around the main operating room and, as a consequence, know very few of the boys any more.

Anything you are able to do in my behalf will have my lasting gratitude and I shall attempt at every turn to make a choice to reinstate me at FX a wise one.

Yours very truly.

P. D. PHELPS.

2035–a *Exhibit R–7*

SAN FRANCISCO, *Oct. 14, 1935.*

MR. DEWEY, *San Francisco.*

Confirming my verbal application to you about 3:30 p. m. October 8th. Please consider this my application for reinstatement as Branch Manager at FX Stock Exchange San Francisco.

P. D. PHELPS.

2036 INTER-OFFICE MEMORANDUM

OCTOBER 17, 1935.
[0228 Air Mail]

To Mr. Ellery W. Stone.
From H. L. Rodman.
Subject P. D. Phelps—Application for Reemployment.

Forwarded.

In view of the fact that no vacancies now exist at the Stock Exchange Branch Office, San Francisco, it is not recommended that Mr. Phelps be employed as requested by him.

It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur at the Stock Exchange Branch Office.

Enclosure.

H. L. R.

October 26, 1935.

To H. L. Rodman.
From Ellery W. Stone.

Returned.

Your recommendation is approved and there is no objection to favorable consideration being given this application when a vacancy occurs at San Francisco.

E. W. S.

2037 *Exhibit R–8*

OCTOBER 8, 1935.

To Mr. A. C. Jorgensen, *Traffic Manager, HB.*
From R. I. Hatch.

Confirming my verbal application to you about 5:30 A. M., October 8th, please reinstate me in the HB Operating Force in my former position as Operating Electrician.

R. I. HATCH.

Approved, confirming verbal approval given about 6 A. M., October 8th.

A. C. JORGENSEN.

2038 *Exhibit R–9*

OCTOBER 18, 1935.

Bulletin to All Employees HB Operating Room:

This will acknowledge receipt of your jointly signed notice dated October 17, 1935 and you may rest assured that your wishes in this matter will be respected.

Please feel free to call upon me at any time, singly or in groups or in any way you see fit for the purpose of discussing your working conditions.

Mr. Stone has been notified by me of your action.

H. L. RODMAN,
General Superintendent.

2039 *Exhibit R–10*

NEW YORK, *Oct. 8, 1935—950 A. M.*

MKASG26 BA DH EMP. OPERATING STAFF, *HB Office:*

The following resolution signed by the operating staff MK is herewith forwarded to you to show how the MK Office stands at present and why. Our primary purpose in signing this resolution was to preclude the possibility of the ARTA executives attempting to further represent us in any negotiation with the Company as we feel they let us down badly. ARTA now through as regards the Delaware Company. If you wish to take any similar step or prevent representation of yourselves by the ARTA in negotiation with the California Company please let us know. In any case we would appreciate any communication you care to send outlining your present setup. 73s. Quote.

Whereas, the MK traffic center ARTA members were denied by the ARTA the right to select their own delegate to the ARTA national negotiation committee in conference with the Mackay Radio management, and whereas, the MK traffic center ARTA members were denied by the ARTA the pledged right to a written ballot on the strike question, and whereas, a strike was called without warning and without written ballot at a most inopportune time (3 a. m. Saturday, October 5th), be it resolved that;

2040 The former ARTA members (both full paid and deposit) of the MK traffic center, both as individuals and as a group, herewith renounce any and all affiliation with the ARTA, and in so doing pass censure on the ARTA officials for ill-advised and unwarranted strike action, and automatically disavow any ARTA member, official, delegate, or committee seeking to act as spokesman on behalf of any MK traffic center employee, or group of employes.

And, be it further resolved, that a committee composed of H. P. Funke, J. S. French, and C. F. McDonough is hereby named as a relations committee to act as spokesmen for the MK Traffic Center employees in any conference with the Mackay Radio management, such authority to be valid until withdrawn by a majority vote of the aforementioned employees, and provided further that to insure the continuity of the relations committee, any vacancies occurring on said committee due to resignation or transfer shall be filed as a result of a majority vote of the MK employees. Unquote. Signed up to present time by 47 MK office operating staff employees.

H. P. FUNKE,
Chairman MK Relations Committee.

954 A. M.

2041 *Exhibit R–11*

SAN FRANCISCO, CALIF., *October 9, 1935.*

To Mr. A. C. Jorgensen, *Traffic Manager, HB.*
From L. N. RONE.

Confirming my verbal application to you at 3:37 P. M., October 9th, please reinstate me in the HB operating force in my former position as Class "A" operator.

(sgd) L. N. RONE.

To Capt. E. H. Dodd,
From A. C. Jorgensen.

This application for employment, together with a number of others, which are being forwarded at the same time is subject to final approval by Mr. E. W. Stone, Operating Vice-President.

There are no vacancies in the HB Operating force at present, and there were no vacancies at the time the applicant made his verbal application to me.

A. C. J.
A. C. JORGENSEN.

2042 INTER-OFFICE MEMORANDUM

OCTOBER 12, 1935.

To Mr. H. L. Rodman.
From E. H. Dodd.

Forwarded.

In view of the fact that no vacancies now exist in the HB Operating Force, it is not recommended that Mr. Rone be employed as requested by him.

It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the HB Operating Room.

E. H. Dodd.

Enc.

2043 October 14, 1935.
[0222 Air Mail]

To Mr. Ellery W. Stone.
From H. L. Rodman.
Subject L. N. Rone—Application for Reemployment.
Forwarded.

In view of the fact that no vacancies now exist in the HB Operating Force, it is not recommended that Mr. Rone be employed as requested by him.

It is recommended that his application be placed on file and given consideration at such future time as any vacancies may occur in the HB Operating Room.

H. L. R.

Enclosure.

October 26, 1935.

To H. L. Rodman.
From Ellery W. Stone.
Returned.

Your recommendation is approved and there is no objection to favorable consideration being given this application when a vacancy occurs at San Francisco.

E. W. S.

Received Oct. 28, 1935. Mackay Radio & Tel. Co.

2043-A *Exhibit R-12*

Hotel Bellevue, Geary and Taylor Streets, San Francisco. Room 319-20, Jorgensen, A. C. 10-7—5.00—Traf. Mgr. Mackay Radio. A12134. Date, 7—8. Forward $5. Room $5. Phone 15¢, 70¢. Total $5.85.

Mr. A. C. Jorgensen,
Traffic Manager, Mackay Radio,
704 Postal Telegraph Bldg., San Francisco, California.
Attention: Capt. Dodd

2044 *Exhibit R-13*

[Copy]

October 7, 1935.

The radio strike called by the ARTA is part of a pre-arranged plan by the leaders of the Union to cause dissension and trouble among all labor unions.

Pyle, vicepresident of the union, is a member of the Communist party and is also a very close friend of Harry Bridges.

Wernicke, a member of the local in Portland, is a friend of Pyles and was a delegate to the Maritime Federation Convention last April in Seattle.

The ARTA is the most radical of any of the Maritime unions and the Communist leaders of the Maritime Federation will use the present strike to call out all radio operators on ships to cause a maritime strike.

This is part of the plan of the leaders to divert attention from the Longshoremen and put the cause of the strike up on the ARTA.

Van Ehrman, the secretary in Seattle is getting ready to call the men off of the ships in Seattle if he can get an excuse, by doing this he will also automatically call off all seamen that are employed on these ships due to the affiliation of the Maritime Federation.

Rasmussen in San Francisco is the guiding hand of the present strike and is also a member of the Communist Party.

Board Ex. No. 5 for *Idf.*

2045 *Exhibit R–14*

A. C. J., chief operator HB

Would like to sign the resolution which was given to you dated October 17, 1935, regarding ARTA, etc. Was overlooked when it was being passed around.

WM. J. BENN,
MERLE DAVIS,
R. SHACKELFORD.

Supreme Court of the United States

Order allowing certiorari

Filed February 28, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Reed took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1938

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MACKAY RADIO & TELEGRAPH COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered on October 19, 1937 (R. 124), denying the petition of the National Labor Relations Board for the enforcement of its order against Mackay Radio & Telegraph Company, made pursuant to the National Labor Relations Act.

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R.

17–48) are reported in 1 N. L. R. B. 201. The opinions of the Circuit Court of Appeals on the original hearing (R. 62–104) are reported in 87 F. (2d) 611. The opinions on rehearing (R. 113–123) are reported in 92 F. (2d) 761.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 19, 1937. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether men on strike because of failure of negotiations concerning wages and terms of employment are employees, within the meaning of the National Labor Relations Act.

2. Whether it is an unfair labor practice, forbidden by the National Labor Relations Act, for an employer to discriminate because of union activities in the reinstatement of employees who have gone on strike because of failure of negotiations concerning wages and terms of employment, and whether the Act authorizes the National Labor Relations Board to order the reinstatement of employees so discriminated against.

3. Whether the National Labor Relations Act, construed so as to authorize the Board to require the reinstatement of such persons, violates the Fifth Amendment.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Sup. II, Title 29, Sec. 151 *et seq.*) are as follows:

> SEC. 2. When used in this Act—
>
> (3) The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment * * *
>
> (9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment * * *
>
> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.
>
> (3) By discrimination in regard to hire or tenure of employment or any term or con-

dition of employment to encourage or discourage membership in any labor organization: * * *

SEC. 10.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

STATEMENT

Pursuant to Section 10 (b) of the National Labor Relations Act, the National Labor Relations Board, on November 9, 1935, issued a complaint and notice of hearing, which were duly served upon respondent (R. 2–5). The complaint, insofar as material here, alleged that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) of the Act (R. 3–4). A hearing was held from December 2 to December 20, 1935, before a Trial Examiner designated by the Board. Oral argument was held before the Board at Washington, D. C., on January 20, 1936, and respondent filed a brief in support of its position. Thereafter, on February 20, 1936, the

Board issued its findings of fact, conclusions of law and order (R. 17–48).

The Board found, in substance, that respondent operated a system for the receipt and transmission by telegraph, radio, and cable of communications in interstate and foreign commerce (R. 18–19). Beginning in June, 1935, the American Radio Telegraphists Association (the ARTA) attempted to negotiate general agreements with respondent concerning the wages and working conditions of its radio operators (R. 20). After these negotiations had continued for several months without success, the San Francisco local of the ARTA, to which the men here involved belonged, authorized the national officers conducting the negotiations to call a strike if the respondent did not execute the agreements by September 23, 1935 (R. 20–21). Pursuant to this authorization and because of the unsatisfactory state of the negotiations, a strike was finally called by the negotiators on October 4, 1935 (R. 21). The strike was unsuccessful, and by October 7 the men were willing to return to work (R. 21–24). The officials of the company agreed to let all the men return at once, except those on a list of 11 who were required to apply to the central office for reinstatement (R. 23). The company's claim was that it had brought 11 men to San Francisco during the strike, and that they were entitled to permanent jobs there (R. 28–29). The 11 men not immediately reinstated included five who were

admittedly inefficient (R. 33–34), a supervisor who was also a member of the union (R. 27–28), and five men who were among the best of the company's operators but who were also the leaders of the San Francisco local of the ARTA (R. 28, 34). The company refused to reinstate any of the five men last mentioned (R. 24, 27)[1] (although all except one of the inefficient employees were taken back) (R. 24, 30, 32, 33–36). The Board found that four of these five employees had been refused reinstatement in order to discourage membership in the ARTA, and that this conduct on the part of respondent constituted discrimination in regard to tenure of employment in violation of Section 8, subdivisions (1) and (3) of the Act (R. 36, 46–47). In addition the Board found that another employee, Phelps, who was not on the original list of 11, was refused reinstatement because of his membership in ARTA, and that this action also violated the same provisions of the Act (R. 36–39, 46–47).

Upon the basis of these findings, the Board ordered respondent to cease and desist from discharging or threatening to discharge any of its employees because they joined or assisted the union or otherwise engaged in union activities; and from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization and collective bargain-

[1] Palmer, Rone, Bash, Loudermilk, and Salisbury. No complaint was made as to Salisbury (R. 2–4).

ing (R. 47). The Board's order further required respondent to offer full reinstatement, with back pay, to the five employees unlawfully discriminated against, and to post appropriate notices (R. 47–48).

In March 1936 the Board, pursuant to Section 10 (e) of the Act, petitioned the Circuit Court of Appeals for the Ninth Circuit for enforcement of the foregoing order (R. 51–54). On January 11, 1937, the court first denied the Board's application (R. 104). Three opinions were handed down (R. 62–104).

Circuit Judge Wilbur held that although "the Board was acting well within the power Congress sought to vest in it" (R. 86, 83–84) in ordering the reinstatement of the five employees, the grant of power violated the due process clause as interpreted in *Adair* v. *United States,* 208 U. S. 161, and *Coppage* v. *Kansas,* 236 U. S. 1 (R. 82–84). He also held that, insofar as the Act authorized the award of back pay without jury trial, it contravened the Seventh Amendment (R. 89).

Circuit Judge Mathews, concurring with Judge Wilbur in result, found it unnecessary to pass upon the constitutional question (R. 89). His position was that the statute defined employees as including "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute," and that there was no evidence or finding that the strike in this case was a "cur-

rent labor dispute" (R. 90). He accordingly concluded that the men on strike were not employees within the meaning of the Act, and that the conduct of respondent toward them could not violate the Act (R. 91). Although he recognized that the Board had found that the strike had been called because of the unsatisfactory state of the negotiations (R. 90), he appears to have construed the phrase "current labor dispute," as used in the statute, as not including such a strike.

Circuit Judge Garrecht dissented (R. 92–104). He agreed with Judge Wilbur that the Board's action was clearly authorized by the statute, but held that the Act did not in any way violate the Constitution, and that the order should be enforced.

After the decisions of this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, and companion cases, holding that the Act did not violate the Fifth and Seventh Amendments, the Circuit Court of Appeals granted a rehearing. Judge Wilbur, who had previously declared that the statute clearly authorized the action of the Board, now took the opposite view. Although explicitly stating (R. 118) that Congress intended the Act to apply to employees on strike in the circumstances at bar, he considered that to require the reinstatement of such employees would be to compel the employer to make new contracts of employment, and that this would be unconstitutional in the light of the *Adair* and *Coppage* cases

and of the language of this Court in the *Jones & Laughlin* case. Accordingly, he held that the statute "properly construed in the light of the Constitution" did not warrant the Board's order (R. 119). Since Judge Mathews adhered to the views expressed in his former opinion (R. 119), the court again denied the Board's application for enforcement of its order (R. 124).

In a second dissenting opinion (R. 119–123), Judge Garrecht set forth his reasons for disagreeing both with Judge Wilbur and with Judge Mathews.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In not holding that it is an unfair labor practice for an employer, in selecting employees for reinstatement after a strike, to discriminate among them because of their union activities.

2. In not holding that the National Labor Relations Act authorizes the National Labor Relations Board to order that the employees discriminated against should be reinstated.

3. In not holding that persons who have ceased work in consequence of a strike called because of the failure of negotiations concerning wages and conditions of employment are "employees," within the meaning of the National Labor Relations Act.

4. In not holding that a strike called because of the failure of negotiations concerning wages and

conditions of employment is a "current labor dispute," within the meaning of the National Labor Relations Act.

5. In not holding that the Act, construed so as to authorize the Board's order, did not violate the due process clause of the Fifth Amendment.

6. In refusing to enforce the Board's order as valid and supported by the evidence and the findings.

REASONS FOR GRANTING THE WRIT

I. The decision below is in conflict with decisions of the Circuit Courts of Appeals for the Fourth and Fifth Circuits. *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 58 S. Ct. 55; *National Labor Relations Board* v. *Bell Oil & Gas Co.,* 91 F. (2d) 509 (C. C. A. 5th).

II. The decision below is also in conflict with a subsequent decision of the Circuit Court of Appeals for the Ninth Circuit, Judges Haney and Stephens concurring and Judge Wilbur dissenting. *National Labor Relations Board* v. *Carlisle Lumber Co.,* decided December 13, 1937.

III. The decision below is erroneous, in the light of the language of the statute and of the decision of this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1.

IV. The question is one of great public importance.

ARGUMENT

I

THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH DECISIONS OF THE CIRCUIT COURTS OF APPEALS FOR THE FOURTH AND FIFTH CIRCUITS

The Circuit Courts of Appeals for the Fourth and Fifth Circuits have enforced orders of the Board requiring the reinstatement of employees where (1) the workers in question had voluntarily ceased work in connection with a strike, and (2) the unfair labor practice which was the basis of the Board's order occurred after the strike had begun. *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 58 S. Ct. 55; *National Labor Relations Board* v. *Bell Oil & Gas Co.,* 91 F. (2d) 509 (C. C. A. 5th), amended order affirmed and enforced without opinion, October 18, 1937.

In the *Jeffery-De Witt* case, prior to the passage of the National Labor Relations Act the employees of the Insulator Company went out on strike because of failure of negotiations with the employer concerning terms of employment. Subsequent to the effective date of the Act the company refused to bargain collectively with a union duly selected as the representative of the strikers. The Board, finding that this refusal constituted an unfair labor practice, ordered the company to offer reinstatement to those of its employees who were on strike at the time such practice occurred. The company

contended that the strikers were not "employees" within the meaning of the Act. The Circuit Court of Appeals enforced the Board's order *in toto*, and this Court denied certiorari. The Circuit Court of Appeals held (1) that the strikers were "employees" whose work had ceased as a consequence of a "current labor dispute," and (2) that the Act authorized the Board to require the reinstatement of striking employees, although the unfair labor practice occurred after the strike had begun. The decision is thus inconsistent with the views of both Judge Mathews and Judge Wilbur.[2]

The *Bell Oil* case, *supra*, involved precisely the same unfair labor practice occurring in the same circumstances as in the case at bar. There the Board found that the single worker whom it ordered reinstated with back pay had gone out on strike along with a number of others and was subsequently refused reinstatement because of his union activities. The Circuit Court of Appeals for the Fifth Circuit held that the Board's authority had been validly exercised, and enforced the Board's order that he be reinstated because of the unlawful discrimination. 91 F. (2d) at 514. This

[2] The facts of the *Jeffery-De Witt* case presented a more difficult problem than those in the case at bar, since there the employees went on strike *before* the passage of the statute. The discussion in the court's opinion was addressed to this question. If the persons there involved were "employees," *a fortiori* persons striking subsequent to the passage of the Act must be employees.

decision is squarely in conflict with the holding of both Judge Wilbur and Judge Mathews in the instant case.

II

THE DECISION BELOW IS IN CONFLICT WITH A SUBSEQUENT DECISION OF THE SAME COURT

In *National Labor Relations Board* v. *Carlisle Lumber Co.*,[3] decided December 13, 1937, the Circuit Court of Appeals for the Ninth Circuit, Judges Wilbur, Haney, and Stephens sitting, sustained an order of the National Labor Relations Board requiring the reinstatement of strikers. In that case, as in the *Jeffery-De Witt* case, the strike had begun before the effective date of the Act, and the employer had refused to bargain collectively with his striking employees after that date. The strike was called because of the failure of the employer to accept the terms of an agreement proposed by the union. Judges Haney and Stephens held that the strikers came within the statutory definition of "employee," and that the statute, construed so as to authorize an order of reinstatement of such employees, was constitutional. They refused to accept the decision in the *Mackay* case as controlling, pointing out that the "concurring result" of the majority in that case "was reached by entirely different reasoning." Judge Wilbur dissented on the ground that "the Act does not authorize" the rein-

[3] Mimeographed copies of this decision will be filed along with this petition.

statement of striking employees, referring to the views expressed in his second *Mackay* opinion.

In these circumstances, the law in the Ninth Circuit must be deemed unsettled in so far as it relates to the power of the Board to order the reinstatement of striking employees because of unfair labor practices committed against them. The situation here presented is not the common one in which certiorari is sought to review a decision inconsistent with a prior one in the same circuit where there is no reason to suppose that the earlier decision is still law. Here review is sought of the *earlier* decision. The judges who comprised the majority of the court in the *Mackay* case are still on the bench, and did not join in the *Carlisle* decision. The judges who comprised a majority in the *Carlisle* case neither overruled the *Mackay* case nor expressed disapproval of either of the distinct positions taken by Judges Wilbur and Mathews. It is thus impossible to be certain that the various judges in the circuit will not continue to reach inconsistent conclusions on substantially identical facts, thus rendering enforcement of the Act within the circuit dependent upon the fortuitous circumstance of which judges are sitting in a particular case.

If the law of the circuit is not thus unsettled, it can only be because the *Mackay* decision has already been overruled *sub silentio*. If this be the case, the decision ought not to be permitted to stand so long as the time to seek review of the judgment

has not expired;[4] for otherwise the enforcement of the Act would be prevented in a situation where it concededly applies. Not only would the five men immediately involved be deprived of rights to which, by hypothesis, they are entitled, but the cease and desist provisions of the Board's order, which apply in part (Section 1 (b)) to the respondent's nation-wide system of communication, would be nullified.

III

THE DECISION OF THE COURT BELOW IS ERRONEOUS IN THE LIGHT OF THE LANGUAGE OF THE STATUTE AND THE DECISION OF THIS COURT IN *NATIONAL LABOR RELATIONS BOARD* v. *JONES & LAUGHLIN STEEL CORP.*

A. *The Board's action was authorized by the statute.*

The National Labor Relations Act makes it unlawful for an employer "by discrimination in regard to hire or tenure of employment * * * to encourage or discourage membership in any labor organization" (Section 8 (3)). In more general terms it also forbids interference with employees in the exercise of their right to form, join, or assist labor organizations and to engage in concerted activities for the purpose of collective bargaining (Sections 8 (1) and (7). The Board is authorized, upon a finding that an employer has engaged in an

[4] Rule 29 of the *Rules of the Circuit Court of Appeals for the Ninth Circuit* requires that petitions for rehearing be filed within 30 days after judgment. The *Carlisle* opinion came down on December 13, 1937, 55 days after the judgment on the rehearing in the *Mackay* case.

unfair labor practice, to require that he "take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." (Section 10 (c)).

In the instant case the Board found that the respondent had intentionally discriminated against five members of the union, including four of its leaders, in refusing to reinstate them after a strike, and had thereby discouraged membership in the ARTA (R. 46–47). The court below did not hold that the Board's findings as to discrimination were not supported by the evidence. They clearly are. Pursuant to the grant of authority in Section 10 (c) the Board ordered the respondent to cease and desist from interfering with its employees in the exercise of their right to self-organization, and to reinstate such employees with back pay (R. 47–48). In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, at 47, this Court specifically held that the Act authorized the reinstatement of employees discriminated against because of their "union activity." That case is controlling here if the terms "employees" and "reinstatement," as used in the Act, apply to men in the position of the strikers in the case at bar.[5]

[5] That the Act does apply to such persons is indicated by the report of the Committee on Labor of the House of Representatives (H. Rep. 1147, 74th Cong., 1st Sess.). That report describes the conduct prohibited by Section 8 (3) as follows (p. 19):

Judge Mathews was of opinion, however, that the Board's action was not authorized by the statute because the persons reinstated were not "employees" as defined in the Act.[6] The term "employee" is defined in Section 2 (3) to "include any

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"The third unfair labor practice prohibits an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage membership in any labor organization. * * * This interference may be present in a variety of situations in this connection, such as discrimination in discharge, lay-off, demotion or transfer, hire, forced resignation, or division of work; in *reinstatement or hire following* a technical change in corporate structure, *a strike*, lock-out, temporary lay-off, or a transfer of the plant." [Italics supplied.]

In another part of the Committee Report it is stated that (p. 24):

"The most frequent form of affirmative action required in cases of this type is specifically provided for, i. e., the reinstatement of employees with or without back pay, as the circumstances dictate."

[6] Judge Mathews did not indicate that the Board had failed to make necessary findings, but that the findings and evidence showing the existence of a strike relating to conditions of employment were not sufficient to bring the case within the statute. In its ultimate findings of fact the Board described the persons concerned as *employees;* and its detailed findings of fact demonstrate that these persons had ceased work because of a current labor dispute. There was no specific ultimate finding that the strike was a "current labor dispute." (The Board's findings are in the same form as those upheld in the *Jeffery-De Witt* case; the court there based its decision that the persons involved were "employees," and that there was a "current labor dispute," on the Board's detailed findings of fact.) Respondent did not claim, either before the Board or in the Circuit Court of Appeals, that

individual whose work has ceased as a consequence of, or in connection with, *any current labor dispute.*" It was Judge Mathews' position that "the evidence * * * does not show that there was any current labor dispute" (R. 90), and that accordingly the persons discriminated against by respondent were not employees within the meaning of the Act.

Judge Mathews' opinion states that the strike was called "because, as stated by the Board in its findings of fact, the negotiators representing the association 'decided that a strike was advisable in view of the unsatisfactory state of the negotiations' " (R. 90). The subject of the negotiations was an agreement concerning wages and conditions of employment (R. 20–21). It is difficult to imagine—even apart from the definition in Section 2 (9) of the Act—what a labor dispute can be if it does not include a strike as to wages and conditions of employment. But in any event the question is settled conclusively by Section 2 (9), which defines "labor dispute" so as to include "any controversy concerning terms, tenure, or conditions of employment."

These statutory provisions indicate clearly (1) that a strike concerning terms of employment is a

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the strike was not a current labor dispute, and it was not doubted by anyone—until Judge Mathews' opinion came down—that the dispute fell within the statutory definition.

current labor dispute, and (2) that the persons engaged in such a strike are employees within the meaning of the Act. The statute has been so construed by the Fourth Circuit in the *Jeffery-De Witt* case, by the Fifth Circuit in the *Bell Oil & Gas* case, by Judges Haney and Stephens in the *Carlisle* case in the Ninth Circuit, and by Judges Garrecht and Wilbur in this case. Judge Mathews' ruling that a strike called because of failure to agree on terms of employment is not a "current labor dispute" is obviously erroneous—both on its face and in the light of the definition of "labor dispute" in Section 2 (9) of the Act.

In his second opinion Judge Wilbur did not deny that the strikers were employees within the meaning of the Act. But his view was that to compel their *reinstatement,* when the unfair labor practice had occurred while they were on strike, would be to compel the employer to enter into a new contract of employment, and that this could not be done consistently with the Fifth Amendment. In order to avoid a construction of the Act which would authorize what he considered an unconstitutional order, he construed the word "reinstatement" in Section 10 (c) as not meaning reinstatement to a position of employment, which is obviously what it was intended to mean, but reinstatement to one's status at the time of the unfair labor practice, which in the case of a practice occurring after a strike had

begun would mean reinstatement to a position as a striker. This construction, patently artificial, is inconsistent with the action of the courts in the *Jeffery-De Witt, Bell Oil & Gas,* and *Carlisle* cases, in each of which reinstatement to a position of employment was ordered although the unfair labor practice occurred after the strike had begun.

Even if this construction of the word "reinstatement" as used in Section 10 (c) were tenable, it would only apply to the affirmative portion of the Board's order requiring reinstatement of the five employees. It would not affect the other provisions of the order directing respondent to cease and desist from interfering with its employees' right to self-organization, since these provisions are in no way dependent upon the Board's power of reinstatement. And yet on the basis of his reasoning with respect to the meaning of "reinstatement", Judge Wilbur denied *in toto* the Board's application for enforcement of its order. This result was clearly erroneous; it does not even find support in Judge Wilbur's own reasoning.

B. *The Act, construed so as to authorize the Board's order, is constitutional.*

The basis of Judge Wilbur's opinion was his belief that to require the reinstatement of striking employees to their former positions would be to compel the employer to make a new contract, and that the Fifth Amendment stood in the way of any such requirement. His premise was that the order

required the making of a new contract—that the striking employee (although an "employee" within the statutory definition) stood in the same position as a man who had never been employed by the respondent, and that reinstatement of the former was the equivalent of giving employment to the latter.

The first answer to this argument is that the premise is false. Many cases indicate that at common law, entirely apart from the definition in the National Labor Relations Act, the employment relationship is not terminated by the act of the employees in going on strike.[7] These cases were reviewed at length by the Circuit Court of Appeals for the Fourth Circuit in the *Jeffery-De Witt* case, and that court concluded that

> Irrespective of the statute, therefore, the strike did not of itself result in a complete severance of the relationship which had been established between the company and its employees. *They were employees on*

[7] *Jeffery-De Witt Insulator Co.* v. *National Labor Relations Board, supra; National Labor Relations Board* v. *Carlisle Lumber Co., supra; Michaelson* v. *United States*, 291 Fed. 940, 942 (C. C. A. 7th), reversed on other grounds, 266 U. S. 42; *Iron Moulders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45, 52 (C. C. A. 7th); *Dail-Overland Co.* v. *Willys-Overland Co.*, 263 Fed. 171, 187, aff'd, 274 Fed. 56, 65 (C. C. A. 6th); *Fryns* v. *Fair Lawn Fur Dressing Co.*, 114 N. J. Eq. 462, 168 Atl. 862, 865; *State* v. *Personett*, 114 Kan. 680, 220 Pac. 520, 524; *Uden* v. *Schaeffer*, 110 Wash. 391, 188 Pac. 395; *Greenfield* v. *Central Labor Council*, 104 Ore. 236, 192 Pac. 783, 787.

> *strike because of the labor dispute which existed* * * * (91 F. (2d) at 138). [Italics supplied.]

Judges Haney and Stephens of the Ninth Circuit were of the same opinion. *National Labor Relations Board* v. *Carlisle Lumber Co., supra.* If the employment relation is not terminated by the strike, the employer is not required to enter into a new contract of employment by the order of reinstatement. Such an order merely directs that a relationship which has not been completely severed be actively resumed.

The inclusion of men on strike within the statutory definition of "employee" (see p. 3, *supra*) thus adopts the rule of the common law. But even if the statute were at variance with the common law doctrine it would not, of course, follow that the statute was unconsitutional. For in the exercise of its power over interstate and foreign commerce, Congress may regulate contractual relationships as long as the regulation is not arbitrary or capricious. Congress may regulate the incidents of the contract of employment in order to safeguard interstate commerce from industrial strife, even if in doing so freedom of contract is to some extent restricted. If the restrictions here imposed upon the employer's right to discriminate in reinstating strikers can reasonably be regarded as carrying out the legitimate purposes of the Act, they are valid.

In the *Jones & Laughlin* case this Court sustained the Act in so far as it imposed a restriction upon the employer's freedom to *discharge* his employees for "union activity" or "for the purpose of discouraging membership in the union" (301 U. S. at 47). The Court there upheld an order of the Board that discharged employees be reinstated with back pay, on the ground that it was a proper sanction for the enforcement of a valid regulation. 301 U. S. at 48. This order interfered with the freedom of contract which the employer would have enjoyed apart from the statute. In the instant case the question relates to the same restraint, except that the employer's discrimination in *selecting* employees to return to work after a strike is involved. Such discrimination is equally capable of being used as a means of interfering with the employees' right of self-organization (see pp. 24–25, *infra*). If it be assumed that such persons are no longer employees, the statute would then be regarded as restricting the employer's right of selection rather than his right of discharge. But the purpose and effect of the regulations are the same, and there is no reason why one should be held to be a valid limitation upon freedom of contract and the other not. The opinion in the *Jones & Laughlin* case indicates that the Court did not regard the difference as material. The Court there stated (301 U. S. at 45–46):

> The Act does not interfere with the normal exercise of the right of the employer *to*

> *select* its employees or to discharge them. * * * It would seem that when employers freely recognize the right of their employees to their own reorganizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the *right of selection* and discharge. [Italics supplied.]

IV

THE QUESTION PRESENTED IS OF GREAT PUBLIC IMPORTANCE

This case raises important questions with respect to the construction and constitutionality of the National Labor Relations Act. The basis of the Act is the judgment of Congress, confirmed by experience, that recognition of the employees' right to bargain collectively through representatives of their own choosing without interference by the employer, will lessen industrial strife. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra,* at 42. If the employer is permitted to discriminate, either in selection or discharge, against persons who are active members of labor organizations, the employees will not feel free to choose their own representatives. Many employees would be afraid to participate in union activities if in the event of a strike the employer could discriminate against them for that reason alone. An employer seeking to break up a union could easily provoke a strike, by methods perhaps not in them-

selves illegal—such as the establishment of wages or working conditions clearly unacceptable to the employees—and then refuse to reinstate the leaders of the union. The mere possibility of such conduct on the part of the employer would prevent many employees from freely joining labor organizations to which the employer might be opposed.

The Board's experience demonstrates that discrimination of the kind here involved is not infrequent.[8] Such conduct would undoubtedly become much more frequent if it were held not to violate the Act. In the light of these facts the present National Labor Relations Board,[9] as well

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[8] See *First* and *Second Annual Reports of the National Labor Relations Board*; at pp. 81–83, and 76–78, respectively, and the following cases: *In the Matter of United Aircraft Manufacturing Co.*, 1 N. L. R. B. 236; *In the Matter of The Timken Silent Automatic Co.*, 1 N. L. R. B. 335; *In the Matter of Canvas Glove Manufacturing Works, Inc.*, 1 N. L. R. B. 519; *In the Matter of Sunshine Hosiery Mills*, 1 N. L. R. B. 664; *In the Matter of Segall-Maigen Co.*, 1 N. L. R. B. 749; *In the Matter of Columbia Radiator Co.*, 1 N. L. R. B. 847; *In the Matter of Alabama Mills, Inc.*, 2 N. L. R. B. 20; *In the Matter of Mackay Radio & Telegraph Co.*, 2 N. L. R. B. 500; *In the Matter of Clark & Reid Co., Inc., and Curtis & Croston, Inc.*, 2 N. L. R. B. 516; *In the Matter of Remington Rand, Inc.*, 2 N. L. R. B. 626; *In the Matter of Lion Shoe Co.*, 2 N. L. R. B. 819; *In the Matter of Elbe File & Binder Co.*, 2 N. L. R. B. 906; *In the Matter of Black Diamond Steamship Corp.*, 3 N. L. R. B., No. 8; *In the Matter of Maryland Distillery Co., Inc.*, 3 N. L. R. B., No. 16; *In the Matter of Kentucky Firebrick Co.*, 3 N. L. R. B., No. 46; *In the Matter of Highway Trailer Co.*, 3 N. L. R. B., No. 65; *In the Matter of Wald Transfer & Storage Co., Inc.*, 3 N. L. R. B., No. 72.

[9] *Ibid.*

as its predecessors established under the National Industrial Recovery Act [10] and Public Resolution No. 44, 74th Cong., 1st Sess.,[11] have uniformly ruled that discrimination in reinstatement of striking employees must be remedied by restoring the victims to their jobs.

The decision of the court below that it is beyond the power of the Board to require the reinstatement of strikers is, in the words of the dissenting judge, "a strained construction designed to nullify the National Labor Relations Act in an important field of its operations." (R. 122.) By validating discrimination in the reinstatement and hire of workers it permits interference with the rights of self-organization and collective bargaining guaran-

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[10] See, *e. g.*, *In the Matter of General Baking Co.* and *Bakery Wagon Drivers, Chauffeurs and Helpers Union, Local #463*, decided Jan. 4, 1934, Decisions of the National Labor Board, Part I, p. 32; *In the Matter of Finck Cigar Co.* and *Cigar Makers' International Union of America*, decided May 12, 1934, *Ibid.*, Part II, p. 26; *In the Matter of Eagle Rubber Co.* and *United Rubber Workers Federal Labor Union #18683*, decided May 16, 1934, *Ibid.*, Part II, p. 31.

[11] *In the Matter of K. O. Lee & Son Co.* and *Hans Christianson, Milton Frantz, James P. Davies*, decided Sept. 8, 1934, Decisions of the (old) National Labor Relations Board, Vol. I, p. 59; *In the Matter of International Furniture Co.* and *Upholsterers, Carpet and Linoleum Mechanics International Union*, decided Sept. 11, 1934, *Ibid.*, Vol. I, p. 63; *In the Matter of North Carolina Granite Corp.* and *Granite Cutters International Ass'n Mt. Airy Branch*, decided Sept. 24, 1934, *Ibid.*, Vol. I, p. 89.

teed in the Act and thereby fosters the industrial unrest found by Congress to result from such interference (Section 1).

CONCLUSION

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Ninth Circuit should be granted.

STANLEY REED,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

JANUARY 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1938

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 706

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MACKAY RADIO & TELEGRAPH COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 17–48) are reported in 1 N. L. R. B. 201. The opinions of the Circuit Court of Appeals on the original hearing (R. 62–104) are reported in 87 F. (2d) 611. The opinions on rehearing (R. 113–123) are reported in 92 F. (2d) 761.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 19, 1937. The petition for a writ of certiorari was filed on January 15, 1938,

and was granted on February 28, 1938. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether men on strike because of failure of negotiations concerning wages and terms of employment are employees, within the meaning of the National Labor Relations Act.

2. Whether it is an unfair labor practice, forbidden by the National Labor Relations Act, for an employer to discriminate because of union activities in the reinstatement of men who have gone on strike because of failure of negotiations concerning wages and terms of employment, and whether the Act authorizes the National Labor Relations Board to order the reinstatement to positions of employment of persons so discriminated against.

3. Whether the National Labor Relations Act, construed so as to authorize the Board to require the reinstatement of such persons to positions of employment, violates the Fifth Amendment.

In addition to these questions, which were presented in the petition for writ of certiorari, respondent has raised, and may press, the questions:

4. Whether the Board's finding that respondent refused to reinstate certain of its employees be-

cause of their union activity is supported by evidence.

5. Whether the petition for writ of certiorari was filed in time.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Sup. II, Title 29, Sec. 151 *et seq.*) are as follows:

> SEC. 2. When used in this Act—
>
> (3) The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment * * *.
>
> (9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment * * *.
>
> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 * * *;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

SEC. 10.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(e) The Board shall have power to petition any circuit court of appeals * * * for the enforcement of such order * * *. No objection that has not been urged before the Board, its members, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive * * *.

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

STATEMENT

Upon written charges duly filed by American Radio Telegraphists' Association, San Francisco Local No. 3, a labor organization, the Board, on November 9, 1935, issued a complaint and notice of hearing, which were duly served upon respondent (R. 1–5). The complaint, in so far as material here,* alleged that respondent was engaged at its San Francisco and other offices in the receipt and transmission by telegraph, radio, and cable of communications in interstate and foreign commerce; that in the course of such business respondent, by discrimination in regard to the tenure of employment of certain named operators employed at its San Francisco office, by reason of said employees' membership in and assistance of Local No. 3, did discourage membership in the union, and thereby committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), of the National Labor Relations Act (R. 2–5).* Respondent duly filed its answer, wherein it did not deny the allegations with respect to the nature of its business but did deny those relating to the unfair labor practices (R. 6–9). On December 16, 1935, the Board issued an amended complaint pursuant to Section 10 (b) of the Act,

* The complaint also alleged that respondent had violated Section 8 (2) of the Act (R. 4). With respect to these allegations the Board dismissed the complaint without prejudice.

changing the complaint in several minor particulars in order to conform it to the proof (R. 7–9; 858–859, 900–901).

A hearing was held at San Francisco before a trial examiner duly designated by the Board and continued, with adjournments, from December 2 to December 20, 1935 (R. 125–1093). Respondent, at the outset, moved to dismiss the complaint on constitutional grounds (R. 127–29). Decision on this motion was reserved (R. 132). Respondent then availed itself in full measure of the opportunity afforded to examine and cross-examine witnesses and to adduce evidence on its behalf. After the evidence had been presented on both sides, but before oral argument before the examiner (R. 1092–1093) the proceeding was transferred by order of the Board and continued before it in Washington (R. 10). The Board thereafter denied a motion made by respondent to resubmit the cause to the trial examiner with directions to prepare and file an intermediate report (R. 10–14).[1] Oral argument

[1] In the court below respondent assigned error to this ruling (R. 57, paragraph X, 3; X, 8). The usual practice of the Board is to permit the trial examiner to file an intermediate report and in such case, on request by respondent, to hear argument upon exceptions to that report. It is clear, however, that occasional departures from this practice—more frequently necessary in the first year of the Act's administration than thereafter—raise no question of infringement of statutory or constitutional right. *Morgan* v. *United States*, 298 U. S. 468, 478. Respondent's answer in the court below states (R. 55–56), and the record establishes (R. 14, 18) that oral argument was had before the Board upon exceptions to the rulings of the trial examiner.

was held before the Board itself in Washington. The respondent filed exceptions to the trial examiner's rulings, and a brief in support of its position (R. 14–17).

On February 20, 1936, the Board issued its findings of fact, conclusions of law, and order (R. 17–48). The Board found,[2] in substance, that respondent operated a system for the receipt and transmission by telegraph, radio, and cable of communications in interstate and foreign commerce (R. 18–19). Beginning in June 1935 the American Radio Telegraphists' Association (the A. R. T. A.) attempted to negotiate general agreements with respondent concerning the wages and working conditions of its radio operators (R. 20). After these negotiations had continued for several months without success, the San Francisco local of the A. R. T. A., to which the men here involved belonged, authorized the national officers conducting the negotiations to call a strike if the respondent did not execute the agreements by September 23, 1935 (R. 20–21). Pursuant to this authorization and because of the unsatisfactory state of the negotiations, a strike was finally called by the negotiators on October 4, 1935 (R. 21). The strike was unsuccessful, and by October 7 the men were willing to return to work (R. 21–22). The officials of

[2] The evidence in support of such of the Board's findings as have been challenged by respondent will be discussed in detail in the appropriate point in the argument. (See pp. 29–31, 54–67, *infra.*)

the company agreed to let all the men return at once, except those on a list of eleven who were required to apply for reinstatement to the central office in New York (R. 23). The company's claim was that it had brought eleven men to San Francisco during the strike who might desire permanent jobs there (R. 28–29). The eleven men not immediately reinstated included five who were admittedly inefficient (R. 33–34), a supervisor who was also a member of the union (R. 27–28), and five men who were among the best of the company's operators but who were also the leaders of the San Francisco local of the A. R. T. A. (R. 28, 34). The company refused to reinstate any of the five men last mentioned (R. 24, 27)[3] (although all except one of the inefficient employees were quickly taken back, without submission of an application to New York) (R. 24, 30, 32, 33–36). The Board found that four of these five employees had been refused reinstatement in order to discourage membership in the A. R. T. A., and that this conduct on the part of respondent constituted discrimination in regard to hire or tenure of employment in violation of Section 8, subdivisions (1) and (3) of the Act (R. 36, 46–47). In addition the Board

[3] Palmer, Rone, Bash, Loudermilk, and Salisbury. No complaint was made as to Salisbury (R. 2–4). Salisbury, who was on leave at the time of the strike, asked at the end of his leave to return to work, and was refused (R. 998–1000); but in the charge filed with the Board his discharge was not made a basis for complaint (R. 2–4). See pp. 57–58, *infra*.

found that another employee, Phelps, who was not on the original list of eleven, was refused reinstatement because of his membership in the A. R. T. A., and that this action also violated the same provisions of the Act (R. 36–39, 46–47).

Upon the basis of these findings the Board ordered respondent to cease and desist from discharging or threatening to discharge any of its employees because they joined or assisted the union or otherwise engaged in union activities; and from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization and collective bargaining (R. 47). The Board's order further required respondent to offer full reinstatement, with back pay, to the five employees unlawfully discriminated against, and to post appropriate notices (R. 47–48).

In March 1936 the Board, pursuant to Section 10 (e) of the Act, petitioned the Circuit Court of Appeals for the Ninth Circuit for enforcement of the foregoing order (R. 51–54). On January 11, 1937, the court first denied the Board's application (R. 104). Three opinions were handed down (R. 62–104).

Circuit Judge Wilbur held that although "the Board was acting well within the power Congress sought to vest in it" (R. 86, 83–84) in ordering the reinstatement of the five employees, the grant of power violated the due process clause as interpreted in *Adair* v. *United States*, 208 U. S. 161, and

Coppage v. *Kansas*, 236 U. S. 1 (R. 82–84). He also held that, in so far as the Act authorized the award of back pay without jury trial, it contravened the Seventh Amendment (R. 89).

Circuit Judge Mathews, concurring with Judge Wilbur in result, found it unnecessary to pass upon the constitutional question (R. 89). His position was that the statute defined employees as including "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute," and that there was no allegation, evidence or finding that the strike in this case was a "current labor dispute" (R. 90). He accordingly concluded that the men on strike were not employees within the meaning of the Act, and that the conduct of respondent toward them could not violate the Act (R. 91). Although he recognized that the strike had been called because of the unsatisfactory state of the negotiations (R. 90), he appears to have construed the phrase "current labor dispute," as used in the statute, as not including such a strike.

Circuit Judge Garrecht dissented (R. 92–104). Agreeing with Judge Wilbur that the Board's action was clearly authorized by the statute, he held that the Act did not in any way violate the Constitution, and that the order should be enforced.

The order of the Circuit Court of Appeals was entered on January 11, 1937 (R. 104). On February 9, at the same term of court and within the thirty days required by the court's rules, the Board

filed a petition for leave to adduce additional evidence and for rehearing (R. 105–107). On April 23 the Circuit Court of Appeals heard oral argument on this motion and gave the parties additional time to file briefs (R. 108). On May 10, before the court had acted on the petition for rehearing and before the end of the term, the Board filed a motion for leave to file a supplement to the petition, together with the proposed supplement, calling the court's attention to the decisions of this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, and companion cases (R. 108–111). On May 17 the Circuit Court of Appeals granted the petition for rehearing, and the case was reargued on June 14, 1937 (R. 112).

On October 19, 1937 the court denied the Board's application for enforcement of its order, each judge again stating his views in a separate opinion (R. 113, 119, 124). Judge Mathews adhered to the views expressed in his former opinion (R. 119). Judge Wilbur, who had previously declared that the statute clearly authorized the action of the Board, now changed his position. Although explicitly stating that Congress intended the Act to apply to employees on strike in the circumstances at bar, he considered that to require the reinstatement of such employees would be to compel the employer to make new contracts of employment, and that this would be unconstitutional in the light of the *Adair* and *Coppage* cases and of the lan-

guage of this Court in the *Jones & Laughlin* case (R. 118). Accordingly, he held that the statute "properly construed in the light of the Constitution" did not warrant the Board's order (R. 119). In a second dissenting opinion (R. 119–123), Judge Garrecht set forth his reasons for disagreeing both with Judge Wilbur and with Judge Mathews.

The court's judgment denied enforcement to all the provisions of the Board's order (R. 124).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In not holding that it is an unfair labor practice for an employer, in selecting persons for reinstatement after a strike, to discriminate among them because of their union activities.

2. In not holding that the National Labor Relations Act authorizes the National Labor Relations Board to order that the persons discriminated against shall be reinstated to positions of employment.

3. In not holding that persons who have ceased work in consequence of a strike called because of the failure of negotiations concerning wages and conditions of employment are "employees" within the meaning of the National Labor Relations Act.

4. In not holding that a strike called because of the failure of negotiations concerning wages and conditions of employment is a "current labor dispute" within the meaning of the National Labor Relations Act.

5. In not holding that the Act, construed so as to authorize the Board's order, did not violate the due process clause of the Fifth Amendment.

6. In refusing to enforce the Board's order as valid and supported by the evidence and the findings.

SUMMARY OF ARGUMENT

I. The Board found and the evidence shows that in reinstating striking employees after an unsuccessful strike the respondent discriminated against union members solely because of their union activity. Such conduct constitutes an unfair labor practice forbidden by Sections 8 (1) and 8 (3) of the National Labor Relations Act, and the Board is empowered to order respondent both to cease and desist from such unlawful practices and to reinstate the employees unlawfully discriminated against. The express language of the statute demonstrates that persons on strike are within its protection. "Employee" is defined by Section 2 (3) of the Act to include "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute." "Labor dispute" is defined in Section 2 (9) to include "any controversy concerning terms, tenure or conditions of employment."

Respondent and Judges Mathews and Wilbur in the Circuit Court of Appeals have advanced various reasons why the statute should not be construed to mean what it says. None of these reasons was

accepted by more than one of the judges of the court below; all are plainly unsound.

A. Judge Mathews held that the strikers were not employees within the statutory definition because they did not cease work in connection with a "current labor dispute." The Board's finding and the evidence show that the employees went on strike because of the failure of negotiations with respect to an agreement concerning wages and working conditions. How it can be argued that such a strike is not a labor dispute—especially when labor dispute is defined in the Act to include "any controversy concerning terms * * * of employment"—it is impossible to discern. There is no basis for respondent's contention that the strike in San Francisco, where the unfair labor practices occurred, was merely a sympathetic one; the agreement which the employees were seeking concerned wages and working conditions for the entire Mackay system, including, of course, the San Francisco office.

B. Adopting an objection first advanced by Judge Mathews, respondent contends that "the amended complaint failed to allege a jurisdictional requirement, to-wit, that the men named in the complaint were employees as defined in the Act." The answer to this contention is twofold. First, the complaint clearly was specific enough to apprise respondent fully of the charges against it. Secondly, respondent never urged before the Board that the complaint was defective in this re-

spect; and under Section 10 (e) of the Act such an objection cannot now be considered by the court, in the absence of extraordinary circumstances.

C. Judge Wilbur in his second opinion held that the word "reinstatement," as used in Section 10 (c) of the Act, only authorized the Board to order the reinstatement of an employee to the position which he occupied at the time of the unfair labor practice. In the case of persons on strike at that time, he held, this would mean reinstatement to the position of a striker (even though the strike was over) and not to a position of employment. It is plain, however, that Congress intended the phrase "reinstatement of employees" to mean reinstatement to the employees' former jobs, and did not contemplate the futility of restoration to a meaningless status.

D. Judge Wilbur deemed this forced construction necessary to save the constitutionality of the Act. He was of opinion that to require the reinstatement of strikers would be to compel respondent to enter into a new contract of employment, and that this would violate the due process clause as interpreted in *Adair* v. *United States,* 208 U. S. 161, and *Coppage* v. *Kansas,* 236 U. S. 1. But even under the preexisting common law it has frequently been held that a strike does not terminate the relation of employer and employee; the reinstatement order merely requires that a relationship which has not been entirely severed be actively resumed.

Even if the order of reinstatement be regarded as directing the formation of a new contractual relationship, it would not violate the Fifth Amendment. Congress may impose reasonable limitations upon freedom of contract in order to protect interstate commerce against industrial strife. The restriction imposed upon the employers' right to select employees for reinstatement following a strike is no different in kind or degree from the restriction upon the right of discharge which was upheld in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1. Both restrictions are necessary to guarantee the right of self-organization. A discharge because of union activity and refusal to reinstate for the same reason are open warnings of identical import and intensity to all employees, and are equally strong incitements to industrial strife.

II. Even if the men involved were not "employees" within the meaning of the Act, the Board's order was authorized. Section 8 (3) makes it an unfair labor practice for an employer "by discrimination *in regard to hire* or tenure of employment * * * to encourage or discourage membership in any labor organization." This language plainly applies to an employer's conduct in *hiring* employees, and not merely to the discharge of persons already employed. Moreover, the coercion of "employees" forbidden by Section 8 (1) of the Act may be accomplished by discrimina-

tion directed, immediately, against prospective employees.

Nor is the Board's power "to take such affirmative action, including the reinstatement of employees with or without back pay, as will effectuate the policies of this Act" so circumscribed as to exclude the power to order the reinstatement of former employees in the circumstances at bar. The power to order the "reinstatement of employees" does not purport to be exclusive. The Board's power to require respondent to give positions, with back pay, to the five men here involved is subject to the single test of whether such action will effectuate the policies of the Act. Restoration of the five men to their former positions in this case was both appropriate and necessary to dissipate the coercive effect of the unlawful discrimination practiced against them.

III. The Board's finding that respondent had discriminated in reinstating its operators after the strike because of their union activity is supported by the great weight of the evidence. The Board found and the evidence shows that respondent placed on a list of eleven men required to apply for reinstatement after the strike five of its best operators, who were the leaders of the union, solely because of their union leadership and activity; that respondent had caused these men to believe that they were being permanently blacklisted because of their union activity and had therefore been responsible for their not applying immediately for

reinstatement, and that respondent had deliberately shifted to a "first come, first served" basis for reinstatement of the employees on the list of eleven only when it discovered that all of the men except the leaders of the union had applied for reinstatement and that they could thus be kept from returning to work.

IV. Respondent's contention that the rehearing granted by the Circuit Court of Appeals was a nullity, and that therefore the petition for certiorari should have been filed within 90 days of the first judgment below, is without merit. The circuit courts of appeals have power to grant rehearings in proceedings under the National Labor Relations Act, as they do in proceedings under the Federal Trade Commission Act. The petition for rehearing granted here was filed within the 30 days required by the rules of the court below, as the court held, and in any event the court had power during the term in which the original judgment was entered to waive this limitation in its rules.

ARGUMENT

I

THE BOARD'S ORDER IS EXPRESSLY AUTHORIZED BY THE ACT AND NOT PROHIBITED BY THE CONSTITUTION

Participating in an attempted nation-wide strike, respondent's point to point operators[4] in San Francisco ceased work at midnight of October 4,

[4] Respondent's operators include marine and land operators. The latter are called "point to point" operators.

1935. The strike failed. The unfair labor practices charged against respondent occurred in connection with the termination of the strike and the men's return to work. The Board found, and the evidence demonstrates (see pp. 54–67, *infra*), that respondent while reinstating the rest of the strikers excluded certain leaders of the union solely because of their union activity. The correctness of the Board's finding that such discrimination occurred was not questioned by the court below. See pp. 54–55, *infra*. The central issues presented are whether discrimination because of union activity in selecting for reinstatement employees who have voluntarily gone on strike is forbidden by the Act, and whether—if so—the Board is empowered to direct the reinstatement of the men thus discriminated against.

The text of the Act returns a peculiarly cogent and unambiguous answer to these questions. Section 8 (3) of the Act in terms makes it unlawful for an employer "by discrimination in regard to hire or tenure of employment * * * to encourage or discourage membership in any labor organization." This provision alone forecloses all possible doubt as to the illegality of respondent's conduct under the statute (see pp. 49–52, *infra*). In Section 8 (1), the Act also forbids, in more general terms, interference with employees in the exercise of their right to form, join, or assist labor organizations and to engage in concerted activities for

the purpose of collective bargaining or other mutual aid and protection.

With respect to the affirmative relief ordered by the Board the Act is equally specific. Section 10 (c) empowers the Board upon a finding that an employer has engaged in an unfair labor practice, to require that he "take such affirmative action, *including reinstatement of employees* with or without back pay, as will effectuate the policies of this Act." If the men here in question were "employees," there is thus not even presented any question of construction as to what kind of affirmative action will effectuate the policies of the Act. Compare *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, decided February 28, 1938; see pp. 52–54, *infra*. By express inclusion the Act anticipates this issue.

As to whether the men whose reinstatement was ordered were employees the Act likewise permits no doubt. Section 2 (3) declares that "the term 'employee' shall include [*inter alia*] * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice * * *." This language plainly manifests the intention of the Congress that men on strike are to be treated as employees in the enforcement of the Act, regardless of whether the strike itself resulted from an unfair labor practice. But out of abundance of caution the Act proceeds further to define the phrase "labor dispute" as including, *inter alia*,

"*any* controversy concerning terms, tenure or conditions of employment * * * (Section 2 (9)).

The Board found (R. 21) that respondent's operators ceased work because of dissatisfaction with the state of negotiations which were being conducted by their representatives in an effort to secure an agreement concerning the terms of their employment. The findings recount in detail the circumstances of these negotiations (see pp. 29–31, *infra*). Since the object of the negotiations was an agreement "concerning terms, tenure or condition of employment," clearly the strike which was called when the negotiations failed to achieve their purpose was a "current labor dispute" within the statutory definition. Since the operators' work ceased as a consequence of this dispute, it is equally plain that they are "employees" within the meaning of the Act. Accordingly, the Board is expressly authorized by Section 10 (c) to require respondent to cease and desist from the unfair labor practice and "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

It thus appears that in every respect the Board's action in this case is authorized by the plain, unambiguous language of the statute. The legislative history confirms what otherwise is clear.[5] That the

[5] The report of the Committee on Labor of the House of Representatives (H. Rep. 1147, 74th Cong., 1st Sess.) de-

Board has the power exercised in the case at bar the circuit courts of appeals (including the Ninth Circuit, in a later case) have uniformly regarded as not open to question. *Black Diamond Steamship Corporation* v. *National Labor Relations Board* (C. C. A. 2d, February 14, 1938); *Jeffery-De Witt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 58 S. Ct. 55; *Mooresville Cotton Mills* v. *National Labor Relations Board,* 94 F. (2d) 61 (C. C. A. 4th);[6] *National Labor Relations Board* v. *Bell Oil & Gas Co.,* 91 F. (2d) 509 (C. C. A. 5th), amended order affirmed and enforced without opinion, 93 F. (2d) 1010; *National Labor Relations Board* v. *Carlisle Lumber Co.,* 94 F. (2d) 138 (C. C. A. 9th, Judges Haney, Stephens, and Wilbur sitting). Only obfuscation of the statute, it is

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scribes the conduct prohibited by Section 8 (3) as follows (p. 19):

"The third unfair labor practice prohibits an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization. * * * This interference may be present in a variety of situations in this connection, such as discrimination in discharge, lay-off, demotion or transfer, hire, forced resignation, or division of work; in *reinstatement or hire following* a technical change in corporate structure, *a strike*, lock-out, temporary lay-off, or a transfer of the plant." [Italics supplied.]

[6] On grounds not material here, the Board's order was not enforced as to four of the eight strikers ordered reinstated. With respect to these and other questions a petition for rehearing is now pending.

earnestly submitted, can create in this situation any problem as to its meaning.

The grounds advanced by the two judges of the court below for refusing to enforce the Board's order are various. They will be enumerated, and then discussed, *seriatim*.

(a) Judge Mathews held that the men who were refused reinstatement were not employees at the time the unfair labor practice occurred (R. 90–91). Respondent presses this contention (brief in opposition, pp. 18–22). The basis of the argument is the claim that the men had not ceased work as a consequence of, or in connection with, a "current labor dispute." Judge Mathews appears to have held that a strike called in the course of negotiations for a collective labor agreement, as a means of obtaining a favorable agreement, is not a current labor dispute within the meaning of the Act (R. 90). This holding was accepted by neither of the other judges. Respondent had not advanced this particular contention in the court below, but had made the broader argument that the Act does not forbid discrimination against men who have voluntarily gone on strike before the commission of any unfair labor practice by the employer. In this Court (brief in opposition, pp. 19–22), respondent has advanced the distinct and narrow contention that the men struck sympathetically, and that such a strike is not a "current labor dispute" under the Act.

(b) There is a suggestion in Judge Mathews' opinion that his holding was based upon a point of pleading rather than of substance—namely, that the complaint failed in terms to allege the existence of a "current labor dispute" (R. 90). This objection, which has been adopted by respondent, was raised neither before the Board nor in the argument before the court below. It likewise was not accepted by either Judge Wilbur or Judge Garrecht.

(c) Judge Wilbur, in his second opinion, held that for constitutional reasons the word "reinstatement" as used in Section 10 (c) should be construed—in the case of employees who have gone on strike prior to the commission of any unfair labor practice—to mean reinstatement only to the position of a striking employee and not reinstatement to a position of employment (R. 118–119). This construction was not accepted by either of the other two judges and had been rejected by Judge Wilbur himself in his first opinion (R. 86).

(d) Judge Wilbur and respondent contend that the Act would be unconstitutional if construed to authorize an order of reinstatement to a position of employment of men who have been the victims of an unfair labor practice, where the men had gone on strike before the unfair labor practice was committed (R. 118). This view was not accepted by either of the other two judges.

A. THE MEN WHO WERE THE VICTIMS OF RESPONDENT'S UNLAWFUL DISCRIMINATION WERE "EMPLOYEES" WITHIN THE MEANING OF THE ACT, SINCE THEY HAD CEASED WORK IN CONNECTION WITH "A CURRENT LABOR DISPUTE"

Section 2 (3) of the Act specifically defines employees to include persons whose work has ceased either (1) "as a consequence of, or in connection with, any current labor dispute" or (2) "because of any unfair labor practice." This language obviously brings within the protection of the Act employees on strike. Respondent's contention in the court below that strikers who had left their positions "by their voluntary act" (R. 116) ceased to be employees, protected by the Act against discrimination, was in the teeth of the statutory definition. As Judge Wilbur, with whom on this point Judge Garrecht agreed (R. 93), said in his first opinion (R. 86, 117):

> But to base our conclusion upon that theory in the case at bar would require us to ignore the declarations in the act itself that employees on a strike are to be considered still as employees within the meaning of the Act * * *. Consequently, the Board was acting well within the power Congress sought to vest in it * * *.

Respondent urged that the Congress cannot "create the relationship of employer and employee where no such relationship exists in fact" (R. 115), and that it must not be understood, there-

fore, as having attempted to do so.[7] There is no warrant for this suggestion that the definition adopted by the Congress is contrary to fact. The basis in fact of the legal relationship of employer and employee is the understanding and intention of the parties. The implication of fact in respondent's argument—that an employee in determining to strike determines to abandon his job, and so to abrogate the legal relationship—clearly is untrue. A strike has purpose and meaning only in so far as it contemplates a return to the job. The Act recognizes this fact and attaches to it the legal consequence that a workman while on strike retains, for the purposes of the Act, the legal status of an employee.

Nor can it be material whether the strike was preceded or caused by an unfair labor practice. The expressed alternatives in the statute are un-

[7] The Congress, of course, may define the terms it uses in a statute without restriction so long as the substantive result of the definition is not unconstitutional. Respondent's contention, so far as it is based upon the Constitution, is shown hereafter to be unsound (see pp. 41–49, *infra*). But the unambiguous terms of the definition in any event leave no room for construction, whether based upon avoidance of supposed constitutional doubts or otherwise. Respondent appears to have conceded that the inclusion of strikers within the term "employee" has at least the effect of compelling the employer to bargain collectively with the strikers (R. 115). But just as the inclusion of strikers in the definition cannot be wholly ignored, neither can its effect be thus arbitrarily limited. The Act imposes a duty to refrain from provocative discrimination as well as a duty to bargain collectively; and both duties must be enforced.

mistakable in their import. A person may remain an employee whether he has ceased work because of an unfair labor practice *or* in consequence of a current labor dispute. Denial of the applicability of the Act in the present case, therefore, must rest specifically upon denial of the existence of a current labor dispute. This Judge Mathews' opinion expressly recognized (R. 90–91), and this respondent—whatever may have been its position in the court below—appears now clearly to concede (brief in opposition, p. 18).

We find it difficult to understand how it can seriously be argued that there was no current labor dispute in the case at bar.[8] In Judge Mathews' own language (R. 90):

> The strike appears to have been called * * * because, as stated by the Board in

[8] The portion of his opinion in which Judge Mathews explains how he came to this conclusion reads as follows (R. 90–91):

"The trouble with this argument is that there is no allegation, no proof, and no finding that Loudermilk, Bash, Phelps, Rone, or Palmer ceased work 'as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice.' There is evidence that they participated in a strike, but no evidence that the strike was called, or that they participated therein, 'as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice.' The evidence shows that, at the time of, and for some months prior to, the calling of the strike, certain negotiations were pending between the American Radio Telegraphists' Association and respondent, but it does not show that there was any 'current labor dispute,' or that respondent had engaged or was then

> its findings of fact, the negotiators representing the Association "decided that a strike was advisable in view of the unsatisfactory state of the negotiations."

This language itself describes a labor dispute. It is difficult to imagine what such a dispute can be if it does not include a strike called because of the unsatisfactory state of negotiations between an employer and the representatives of his employees. What elements of a labor dispute are lacking in such a situation Judge Mathews conspicuously failed to point out. As to the elements which are requisite under the statute there can be no doubt. They are—as applied to the present case—(1) a "controversy", (2) "concerning terms, tenure or conditions of employment" (Section 2 (9)). The findings of the Board and the

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engaging in any 'unfair labor practice.' The strike appears to have been called, not 'as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice,' but because, as stated by the Board in its findings of fact, the negotiators representing the Association 'decided that a strike was advisable in view of the unsatisfactory state of the negotiations.' Since, on the facts, Loudermilk, Bash, Phelps, Rone, and Palmer do not come within the above quoted definition, it is unnecessary to consider respondent's contention that Sec. 2, subdivision (3), of the Act is unconstitutional and void.

"Since these men were not employees at the time they were alleged to have been interfered with, restrained, and coerced, such alleged interference, restraint, and coercion did not constitute an unfair labor practice, within the meaning of the Act. Therefore, in ordering respondent to cease and desist from such alleged interference, restraint, and coercion, the Board has exceeded its authority."

supporting evidence establish conclusively that both these elements were present in the case at bar.

(1) A strike would seem to be *per se* a controversy, regardless of the state of the negotiations out of which it grew. Respondent's suggestion that there was no "argument or expression of opposing views or claims" prior to the strike (brief in opposition, p. 20) passes cavalierly over the controlling fact that there was a strike. In consequence of, and in connection with, that strike the work of respondent's employees ceased.

But respondent's suggestion, apart from its premise, is without foundation. That "argument and the expression of opposing views and claims" had been taking place for months between respondent and the San Francisco local is outside the realm of question. An agreement concerning wages and working conditions, which had been originally prepared by the San Francisco local and ratified by all the other locals, had been presented to the Mackay officials in June 1935 and again in September 1935. In September, Salisbury, the Chairman of the San Francisco local, joined two of the national officers in New York, at their request, to press the union's demands (R. 20). Before Salisbury's departure, the San Francisco operators voted to back the demands, if necessary, to the extent of striking (R. 20, 170–171, 245–247). At a meeting with the leaders of the San Francisco local, Stone, respondent's operating vice-presi-

dent, who happened to be in San Francisco on September 13, asked for more time to consider the agreement (R. 21, 173, 412, 1098); there was testimony that at the meeting he threatened to close down the west coast circuits in the event of a strike (R. 175, 470; Bd. Ex. 2, at R. 1097–1098). The members of the committee felt that Stone's attitude at this meeting clearly presaged failure of the negotiations in New York (R. 1097–1100). On the same day the San Francisco local responded by giving the company until September 23 to execute the agreement, unless by that time the A. R. T. A. officials believed that the negotiations were proceeding satisfactorily (R. 21, 174–176, 247, 253, 256, 258, 484; Bd. Ex. 2, at R. 1098–1100). The Board found that in view of the prior authorization given these officials to call a strike, this was in substance fixing September 23 as the deadline after which a strike, if necessary, could be called (R. 21, 1100). The minutes of the meeting at which this ultimatum was voted reveal the gravity with which the members regarded it (Bd. Ex. 2, at R. 1096–1101). On October 4 Salisbury in New York called upon the local by telephone to comply with its prior strike vote inasmuch as Stone had refused to execute the contract and had made an unsatisfactory counter-offer (R. 21, 176; Bd. Ex. 3, at R. 1101). A meeting was held; a strike committee was unanimously elected (R. 21, 318–320; Bd. Ex. 3, at R. 1102); and at midnight all the operators on

duty, except the official in charge, went on strike (R. 21, 177, 422–423, 752–753).

If some element of acerbity be necessary to render negotiations between employer and employees a "controversy," assuredly it was present here. Words have lost their meaning if demands, which are continuously pressed for more than a month under repeated threats of a strike and as continuously refused with counter-threats of retaliation, can be described as noncontroversial.

(2) No less clearly was the controversy between respondent and the representatives of its employees one "concerning terms, tenure or conditions of employment." The Board specifically found (R. 20) that the agreement, the acceptance of which the union was demanding, was one "concerning wages and working conditions for the entire Mackay point to point system," including, of course, those of the San Francisco operators. Respondent's contention (brief in opposition, p. 22) that the "strike in San Francisco was a sympathetic strike in aid to the strikers in New York" is in the most exact sense frivolous. The argument is apparently based, if it has any basis, upon the assumption that the San Francisco operators could not be involved in a labor dispute because the negotiations were taking place in New York. That the San Francisco operators were personally concerned in the negotiations, and in the strike which followed, appears from hundreds of pages in the record. Nor in any case, it may be added, is there any

foundation for respondent's assumption that the strike, if it had been a sympathetic one, would not have constituted a labor dispute. Compare *Lauf* v. *E. G. Shinner & Co., Inc.*, decided February 28, 1938.

It is true that the findings of the Board did not state in so many words that the strike was a current labor dispute.[9] But the findings described in detail a conflict between the respondent and the San Francisco local in terms which show plainly that the conflict was a labor dispute.[10] As Judge Garrecht stated in his second dissenting opinion (R. 119):

> The evidence and findings are clear to the effect that a labor dispute culminating in a

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[9] Since respondent did not urge the objection that there was no labor dispute before the Board it cannot now complain that the Board's findings are inadequate in that respect. See Section 10 (e) of the Act, and the discussion at pages 36–37, *infra*.

[10] There can be no question as to the sufficiency of the Board's finding that the five men in question were "employees." The Board's detailed findings of fact show plainly what the status of the men was. The Board referred to them as employees. It specifically found that Phelps, one of the five, "was still an employee at the time of the strike" (R. 38) and referred to the other four as men who had held jobs with respondent at the time of the strike "and who because of union activity had temporarily severed their active work on those jobs but not their status as employees of respondent. See Section 2, subdivision (3) of the National Labor Relations Act." (R. 31.) In its concluding finding of fact the Board found that by refusing to reinstate the five men, "thereby discharging said employees * * * respondent did discriminate in regard to tenure of employment * * *" (R. 46).

> strike occurred as a climax to protracted and unsatisfactory negotiations.

The implications of Judge Mathews' opinion to the contrary are disturbing and far-reaching. If a strike in the employees' own self-interest does not *per se* constitute a labor dispute, then enforcement of the Act is consigned to the morass of classifying and appraising the rights and wrongs and the degrees of acerbity of pre-strike negotiations in order to determine which strikes are and which strikes are not disputatious. The result would approximate a reading out of Section 2 (3) of the Act the words "current labor dispute," having the effect of confining the category of "employees" on strike to employees whose work has ceased "because of any unfair labor practice." The penalty of a strike not prompted by an unfair labor practice would thus be complete loss of the Act's protection. Such a result is clearly inconsistent with the express direction of Section 13 of the Act:

> Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

See *National Labor Relations Board* v. *Remington Rand, Inc.* (C. C. A. 2d, February 14, 1938).

B. THE COMPLAINT ADEQUATELY ALLEGES THAT THE MEN IN QUESTION WERE EMPLOYEES WHO HAD CEASED WORK IN CONNECTION WITH A LABOR DISPUTE

Adopting an objection first advanced by Judge Mathews (R. 90–91), respondent contends (brief in opposition, pp. 23–24) that "the amended complaint

failed to allege a jurisdictional requirement, to-wit, that the men named in the complaint were employees as defined in the Act." This contention is to be distinguished sharply from that which has just been discussed. Whether upon the facts proved and found the men involved were employees within the meaning of the Act is a question of substantive law, depending upon the proper construction of the Act. Whether the complaint properly alleged that the men were employees, so as to permit the proof and findings actually made, is a question simply of pleading under the Act. There are two answers to respondent's objection: first, that it would be without merit, even if it were open; and, second, that it is no longer open under the Act, since it was not urged before the Board.

(1) The amended complaint alleges (R. 8) that respondent "during the period approximately October 7, 1935, to October 10, 1935, inclusive, * * * did refuse to reemploy" five named individuals, "operators employed by the respondent at the San Francisco office" because of their union activities, "and has at all times since said date refused to reemploy these said employees." It was further alleged that such conduct violated subdivisions (1) and (3) of Section 8 of the Act. These allegations expressly describe the men not reemployed as "employees." Only two possible objections can be made to the sufficiency of the allegations to support the proof and findings actually made—first, that the affirmative description of the operators as "em-

ployees" at the named dates was contradicted or qualified by the use of the verb "reemploy"; and, second, that the circumstances which rendered the men still "employees"—namely, cessation of work in connection with a strike, or labor dispute—were not expressly set forth.

The triviality of these objections is apparent. Technically it may be replied that the expression "reemploy * * * employees" at most introduces an ambiguity, open only to a motion to make more definite and certain; and that the circumstances which render the men "employees" under the Act go merely to support the main allegation that they are employees, and need not be set forth in the complaint. The important answer in point of substance, however, is that there is not the slightest ground for suggesting that respondent was in any way misled or harmed by any insufficiency in the amended complaint. The function of a complaint in a proceeding of this kind was described by Mr. Justice Brandeis, dissenting, in *Federal Trade Commission* v. *Gratz,* 253 U. S. 421, at 430, as follows:

> The function of the complaint is solely to advise the respondent of the charges made, so that he may have due notice and full opportunity for a hearing thereon. It does not purport to set out the elements of a crime, like an indictment or information, nor the elements of a cause of action, like a declaration at law or a bill in equity. All that is requisite in a complaint before the

> Commission is that there be a plain statement of the thing claimed to be wrong, so that the respondent may be put upon his defense.

See also *Florida* v. *United States,* 282 U. S. 194, 209. The amended complaint here plainly satisfied this test. Knowledge as to why the men ceased work and of all the circumstances of the refusal to reemploy was obviously in respondent's possession.

(2) The second answer to respondent's objection is that respondent never urged before the Board that its complaint was defective for the reason now advanced. The Act provides in Section 10 (e) that—

> No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.[11]

That provision is plainly applicable here, as Judge Garrecht held (R. 93) and as Judge Mathews erroneously failed to hold. Not only in the charge and complaint but in the opening statement by counsel for the Board (R. 132–135) respondent had been fully apprised of the nature of the Board's case; and respondent's counsel had shown his

[11] It has not been suggested that the failure to urge the objection before the Board should be excused because of any extraordinary circumstances.

awareness (R. 129) of the necessity under the Act of taking any objections to the complaint in the administrative proceedings. Nevertheless, when the amended complaint was filed, no objection whatever was offered on respondent's behalf (R. 900–901). If at any time during the proceedings before the Board, the objection had been called to its attention, the Board would have had an opportunity to consider, and if necessary to correct, the alleged defect by a further amendment, as it is expressly empowered to do by Section 10 (b) of the Act. From the record it is perfectly clear that not until after Judge Mathews' opinion was handed down did it occur to respondent that there might be in the respect in question any technical inadequacy in the complaint as amended. A more appropriate occasion for enforcing the mandate of Section 10 (e) of the Act could scarcely exist.

C. JUDGE WILBUR'S CONSTRUCTION OF THE WORD "REINSTATEMENT" IS UTTERLY UNTENABLE

In his first opinion Judge Wilbur stated that the Board's decision was in all respects authorized by the Act, but held that the Act as here applied was unconstitutional (R. 86). After the decision of this Court in the *Jones & Laughlin* case, Judge Wilbur altered his position on the question of statutory construction. Apparently considering that the effect of the *Jones & Laughlin* decision should be strictly limited to the facts then before the Supreme Court, he reiterated in his second opinion

the argument that *Coppage* v. *Kansas,* 236 U. S. 1, and *Adair* v. *United States,* 208 U. S. 161, prevented the Act from applying to the circumstances presented in the case at bar (R. 118–119).

This "constitutional limitation" caused Judge Wilbur to give an extraordinarily strained meaning to the term "reinstatement" as used in Section 10 (c) of the Act.[12] He held that that term meant not reinstatement to a position of employment, which is obviously what it was intended to mean, but reinstatement to one's status at the time the unfair labor practice was committed (R. 118–119). In the case of employees discriminated against during a strike, his view was that the Board's power was limited to directing their reinstatement to the position of strikers, where they might remain indefinitely. Where, as here, the strike had terminated prior to issuance of the Board's order, the positions to which the employees would be entitled by Judge Wilbur's reasoning are peculiarly anomalous.

This is plainly not what the statute was intended to mean. Discrimination among strikers at the conclusion of a strike, by reason of their union activity, is clearly forbidden by Section 8, subdivision (3).[13] Power was vested in the Board to require

[12] Section 10 (c) authorizes the Board "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

[13] See the report of the House Committee on Labor, quoted in note 5, *supra*, pp. 21–22.

reinstatement of employees discriminated against in violation of the Act in order that the coercive effects of such discrimination might be dissipated by restoration of the *status quo* existing prior to its commission. This requires restoration of the victims of the discrimination to the positions they would have occupied had they not been excluded from work because of their union activity. The discrimination occurred when the employees sought to return to work upon collapse of the strike; restoring them to positions as "strikers" is obviously futile to accomplish any of the purposes for which the power to direct reinstatement was granted the Board.[14]

In no just sense may restoration to such a position be described as reinstatement at all. In effect, Judge Wilbur's interpretation reads into the phrase "reinstatement of employees" in Section 10 (c) a limiting definition of "employee" which is inconsistent with the express definition of Section 2 (3), and which in terms was repudiated by Judge Wilbur himself (p. 25, *supra*). Employers would thus be given *carte blanche* to penalize union leaders

[14] The speciousness of Judge Wilbur's reasoning is shown by the fact that the status of the men at the time of the unfair labor practice was not that of active strikers but of men seeking reinstatement to their jobs. They were then entitled to reinstatement to wage-paying positions without discrimination. If time could be rolled back and these men restored to their status at that time, with discrimination eliminated, they would then have been reinstated along with the other employees.

in circumstances which are frequently recurring. The discouragement to collective bargaining and the incitement to industrial strife implicit in conduct so directly provocative the Act would be rendered ineffectual to avert.

In five cases other than the present, orders of the Board directing the reinstatement of strikers because of unfair labor practices committed during the strike have been passed upon by the circuit courts of appeals. In those cases the Second, Fourth, Fifth, and Ninth Circuits have given the statute its clear meaning and interpreted "reinstatement" to mean restoration to wage paying positions in the employer's plant. *Black Diamond Steamship Corp.* v. *National Labor Relations Board,* February 14, 1938 (C. C. A. 2d); *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 58 S. Ct. 55; *Mooresville Cotton Mills* v. *National Labor Relations Board,* 94 F. (2d) 61 (C. C. A. 4th); *National Labor Relations Board* v. *Bell Oil & Gas Co.,* 91 F. (2d) 509 (C. C. A. 5th), amended order affirmed and enforced without opinion, 93 F. (2d) 1010. The Ninth Circuit, in a decision subsequent to that in the present case, agreed with this uniform line of authority, Judges Haney and Stephens concurring and Judge Wilbur dissenting. *National Labor Relations Board* v. *Carlisle Lumber Co.,* 94 F. (2d) 138 (C. C. A. 9th). There are no contrary decisions.

D. THE ACT, CONSTRUED SO AS TO AUTHORIZE THE BOARD'S ORDER, IS CONSTITUTIONAL

Judge Wilbur deemed the forced interpretation just discussed necessary to save the constitutionality of the Act. He was of the opinion that the Board's order compelled respondent to enter into new contracts of employment with the five men ordered reinstated and that the Fifth Amendment precluded such a requirement. While conceding that employees on strike were intended by Congress to be included within the scope of the Board's reinstatement power (R. 118), Judge Wilbur nevertheless held that constitutional limitations necessitated restriction of that power to cases in which its exercise would not require initiation of a new employment relation. On this analysis, he held, reinstatement to positions of employment may be directed only when the employee's cessation of work is not voluntary but is caused by the wrongful act of the other party to the contract—that is, where the employee is discharged in violation of the Act (*ibid.*). Workers who go on strike voluntarily abrogate the employment relation, he declared; and the condition prerequisite to validity of an order directing their reinstatement cannot be met (R. 118–119).[15]

[15] It is thus apparent that the constitutional issue here presented is identical with that involved where the Board directs the reinstatement of strikers *generally* because the employer's unfair labor practices have caused or prolonged the strike, as in the *Black Diamond*, *Remington Rand*, *Jeffery-DeWitt* and *Carlisle* cases, *supra*. In the present case and the *Bell Oil* and *Mooresville* cases, *supra*, the

A conclusive answer to Judge Wilbur's reasoning is that there is no question here of requiring respondent to enter into a new employment relation. The Act clearly provides that during a labor dispute the strikers retain in full the status of employees (Section 2 (3)). In so providing, Congress made no innovation in the law applicable to industrial disputes. It has frequently been held, in cases not involving statutory definitions of "employees" to include men on strike, that the employment relation subsists during a test of economic power between the employer and workers who have left his plant with the intent of returning when the issues in dispute have been settled. *Michaelson* v. *United States,* 291 Fed. 940, 942 (C. C. A. 7th), reversed on other grounds, 266 U. S. 42; *Iron Moulders' Union* v. *Allis-Chalmers Co.,* 166 Fed. 45, 52 (C. C. A. 7th); *Dail-Overland Co.* v. *Willys-Overland Co.,* 263 Fed. 171, 187, aff'd, 274 Fed. 56, 65 (C. C. A. 6th); *Fryns* v. *Fair Lawn Fur Dressing Co.,* 114 N. J. Eq. 462, 168 Atl. 862, 865; *State* v. *Personett,* 114 Kan. 680, 220 Pac. 520, 524; *Uden* v.

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reinstatement order included only the particular strikers against whom discrimination forbidden by Section 8 (3) of the Act was directly exercised. The issue treated by Judge Wilbur would also arise in a case where an applicant for employment was refused it because of union membership and the Board corrected this palpable violation of Section 8 (3) by directing that the victim be given a job. If correct, Judge Wilbur's analysis therefore would preclude any appropriate affirmative relief against the yellow dog contract, a prolific cause of industrial unrest which is clearly interdicted by the Act.

Schaeffer, 110 Wash. 391, 188 Pac. 395; *Greenfield* v. *Central Labor Council,* 104 Ore. 236, 192 Pac. 783, 787. These common law authorities were reviewed at length by the Circuit Court of Appeals for the Fourth Circuit in the *Jeffery-DeWitt* case, *supra,* and the court concluded that—

> Irrespective of the statute, therefore, the strike did not of itself result in a complete severance of the relationship which had been established between the company and its employees. *They were employees on strike because of the labor dispute which existed* * * * (91 F. (2d) at 138). [Italics supplied.]

The *Jeffery-DeWitt* case was followed by Judges Haney and Stephens of the Ninth Circuit in *National Labor Relations Board* v. *Carlisle Lumber Co., supra.*

It cannot be said, therefore, that a requirement that strikers be reinstated directs the employer to enter into a new employment relation, or that this would be the effect of such requirement were it not for the definition of "employee" erected by the Act. Whether viewed under the Act or under the pre-existing common law, the reinstatement order merely requires that a relation which has never been completely severed be actively resumed. The premise upon which Judge Wilbur's ruling of unconstitutionality is based is thus false, and his conclusions are left unsupported.

Were the premise true, however, the conclusions still would be untenable. Assuming that the statute

provides for continuance, during a strike, of a relation which would not continue in the absence of statute, and therefore that the Act, when applied to authorize the reinstatement of strikers, directs the formation of what would be a new relationship were it not for the statutory provisions, it does not follow that such application violates the Fifth Amendment. This Court has held that the Act is a valid exercise of the commerce power. In the exercise of that power Congress may impose reasonable regulation upon contractual relationships and restrict freedom to enter or refrain from entering them so long as such regulation and restriction are conducive to the protection of commerce against the industrial strife which threatens it. This Court, in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, specifically sustained on that basis a limited restriction upon the employer's right to terminate the employment relation, upholding a prohibition against discharge for union activity. That the Board's order directing the reinstatement of discharged employees interfered with the freedom of contract which the employer would have enjoyed apart from the statute did not preclude Congress from imposing this proper sanction "for the enforcement of its valid regulation" (301 U. S. at p. 48).[16]

[16] Judge Garrecht, dissenting, in the Court below, gave expression to elementary principles of constitutional law when he stated that "the relationship of employer and employee, while initiated by contract, is a status the incidents

If the employer is permitted to discriminate, either in selection or discharge, against persons who are active members of labor organizations, employees are not free to choose their own representatives. Many employees would be afraid to

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of which may be altered by the legislature under its police power. In the field of interstate commerce it is the Congress which exercises this police power" (R. 122). To the examples given by Judge Garrecht of the valid exercise of Congressional power to regulate and modify the employment status may be added the following restrictions against which the due process clauses of the Fifth and Fourteenth Amendments have been raised in vain: Prescribing hours of labor in particular occupations, *Holden* v. *Hardy*, 169 U. S. 366; *B. & O. R. R. Co.* v. *I. C. C.*, 221 U. S. 612; *Bunting* v. *Oregon*, 243 U. S. 426; prohibiting child labor, *Sturges & Burn Mfg. Co.* v. *Beauchamp*, 231 U. S. 320; forbidding night work by women, *Radice* v. *New York*, 264 U. S. 292; reducing hours of labor for women, *Muller* v. *Oregon*, 208 U. S. 412; *Riley* v. *Massachusetts*, 232 U. S. 671; *Miller* v. *Wilson*, 236 U. S. 373; *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348; and railroad employees, *St. Louis I. M. & St. P. Ry. Co.* v. *Paul*, 173 U. S. 404; *Erie R. R.* v. *Williams*, 233 U. S. 685; regulating the redemption of store orders issued for wages, *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13; *Keokee Consolidated Coke Co.* v. *Taylor*, 234 U. S. 224; regulating the assignment of wages, *Mutual Loan Co.* v. *Martell*, 222 U. S. 225; requiring payment for coal mined on a fixed basis other than that usually practiced, *McLean* v. *Arkansas*, 211 U. S. 539; *Rail & River Coal Co.* v. *Yaple*, 236 U. S. 338; establishing a system of compulsory workmen's compensation, *Mountain Timber Co.* v. *Washington*, 243 U. S. 219; *Crowell* v. *Benson*, 285 U. S. 22; *Rowlette* v. *Rothstein Dental Laboratories*, 63 F. (2d) 150, cert. den., 289 U. S. 736; restricting or eliminating common law defenses against recovery for injury in course of employment, *Second Employers' Liability Cases*, 223 U. S. 1; prohibiting contracts limiting liability for personal injury, when made in advance

participate in union activities if in the event of a strike the employer could discriminate against them for that reason alone. An employer seeking to break up a union could easily provoke a strike, by methods perhaps not in themselves illegal—such as the establishment of wages or working conditions clearly unacceptable to the employees—and then refuse to reinstate the leaders of the union. The mere possibility of such conduct on the part of the employer would prevent many employees from freely joining labor organizations to which the employer might be opposed.

The Board's experience demonstrates that discrimination of the kind here involved is not infrequent.[17] Such conduct would undoubtedly become

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of injury received, *Chicago, B. & Q Railroad Co.* v. *McGuire*, 219 U. S. 549; requiring service letters upon termination of employment, *Prudential Insurance Co.* v. *Cheek*, 259 U. S. 530; *Chicago, R. I. & Pac. Ry. Co.* v. *Perry*, 259 U. S. 548; providing a minimum wage for women, *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379.

[17] See *First and Second Annual Reports of the National Labor Relations Board*, at pp. 81–83, and 76–78, respectively, and the following cases: *In the Matter of United Aircraft Manufacturing Co.*, 1 N. L. R. B. 236; *In the Matter of The Timken Silent Automatic Co.*, 1 N. L. R. B. 335; *In the Matter of Canvas Glove Manufacturing Works, Inc.*, 1 N. L. R. B. 519; *In the Matter of Sunshine Hosiery Mills*, 1 N. L. R. B. 664; *In the Matter of Segall-Maigen Co.*, 1 N. L. R. B. 749; *In the Matter of Columbia Radiator Co.*, 1 N. L. R. B. 847; *In the Matter of Alabama Mills, Inc.*, 2 N. L. R. B. 20; *In the Matter of Mackay Radio & Telegraph Co.*, 2 N. L. R. B. 500; *In the Matter of Clark & Reid Co., Inc., and Curtis & Croston, Inc.*, 2 N. L. R. B. 516; *In the Matter of Remington Rand, Inc.*, 2 N. L. R. B. 626; *In the Matter of Lion*

much more frequent if it were held not to violate the Act. In the light of these facts the present National Labor Relations Board,[18] as well as its predecessors established under the National Industrial Recovery Act [19] and Public Resolution No. 44, 74th Cong., 1st Sess.,[20] have uniformly ruled that discrimination in reinstatement of striking employees must be remedied by restoring the victims to their jobs.

Shoe Co., 2 N. L. R. B. 819; *In the Matter of Elbe File & Binder Co.*, 2 N. L. R. B. 906; *In the Matter of Black Diamond Steamship Corp.*, 3 N. L. R. B. No. 8; *In the Matter of Maryland Distillery Co., Inc.*, 3 N. L. R. B. No. 16; *In the Matter of Kentucky Firebrick Co.*, 3 N. L. R. B. No. 46; *In the Matter of Highway Trailer Co.*, 3 N. L. R. B. No. 65; *In the Matter of Wald Transfer & Storage Co., Inc.*, 3 N. L. R. B. No. 72; *In the Matter of Lee Clay Products Co.*, 3 N. L. R. B. No. 83; *In the Matter of Phillips Packing Co., Inc.*, 5 N. L. R. B. No. 54; *In the Matter of American Manufacturing Co.*, 5 N. L. R. B. No. 67.

[18] *Ibid.*

[19] See, *e. g.*, *In the Matter of General Baking Co.* and *Bakery Wagon Drivers, Chauffeurs and Helpers Union, Local No. 463*, decided Jan. 4, 1934, Decisions of the National Labor Board, Part I, p. 32; *In the Matter of Finck Cigar Co.* and *Cigar Makers' International Union of America*, decided May 12, 1934, *Ibid.*, Part II, p. 26; *In the Matter of Eagle Rubber Co.* and *United Rubber Workers Federal Labor Union No. 18683*, decided May 16, 1934, *Ibid.*, Part II, p. 31.

[20] *In the Matter of K. O. Lee & Son Co.* and *Hans Christianson, Milton Frantz, James P. Davies*, decided Sept. 8, 1934, Decisions of the (old) National Labor Relations Board, Vol. I, p. 59; *In the Matter of International Furniture Co.* and *Upholsterers, Carpet and Linoleum Mechanics International Union*, decided Sept. 11, 1934, *Ibid.*, Vol. I, p. 63; *In the Matter of North Carolina Granite Corp.* and *Granite Cutters International Ass'n, Mt. Airy Branch*, decided Sept. 24, 1934, *Ibid.*, Vol. I, p. 89.

The restraint imposed in the instant case upon the employer's *selection* of employees for reinstatement following a strike is as limited, as necessary, and wholly as reasonable as the restriction on the right of *discharge* sustained in the *Jones & Laughlin* case. The former regulation does not impair the employer's freedom of contract or deprive him of property to a greater degree or in any different manner than the latter. Both are equally essential to secure the rights of self-organization and collective bargaining guaranteed in the Act and thus to protect the free flow of commerce. A discharge because of union activity and a refusal to reinstate for the same reason are open warnings of identical import and intensity to all the employees and are equally strong incitements to industrial strife. The opinion of this Court in the *Jones & Laughlin* case indicates that no material difference between the two limitations is discernible and that both are valid. The Court there stated (301 U. S. at pp. 45–46):

> The Act does not interfere with the normal exercise of the *right of the employer to select its own employees or to discharge them.* * * * It would seem that when employers freely recognize the right of their employees to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of *the right of selection and of discharge.* [Italics supplied.]

The principles of the *Jones & Laughlin* decision, it is submitted, fully support the constitutionality of an order directing the reinstatement of strikers. This has been the ruling of all the circuit courts of appeals which have passed upon the question. If Judge Wilbur's views are correct, the statute was unconstitutionally applied in the *Black Diamond, Jeffery-DeWitt, Mooresville, Bell Oil,* and *Carlisle* cases, *supra,* in all of which the courts upheld the reinstatement of strikers who were not found to have ceased work as a result of an unfair labor practice. Those cases, it is submitted, have applied the Act in accordance with its clear terms and the applicable principles of the *Jones & Laughlin* case. Judge Wilbur's reasoning, repudiated *sub silentio* by other judges in the Ninth Circuit in the *Carlisle* case, is erroneous and has resulted in denial of enforcement to a valid and proper order of the Board.

II

RESPONDENT'S DISCRIMINATION WAS UNLAWFUL AND THE BOARD'S ORDER WAS VALID REGARDLESS OF WHETHER THE MEN DISCRIMINATED AGAINST WERE EMPLOYEES WITHIN THE MEANING OF THE ACT

It has heretofore been assumed that the validity of the Board's order depends upon whether the five men ordered reinstated were "employees" within the meaning of the Act. The opinions in the court below apparently proceeded upon this assumption. The Board found that the men were "employees"

and this conclusion has been demonstrated to be correct. It should be pointed out, however, that independently of this finding the Board's order is fully authorized by the Act.

The Board's order is divided into two parts, (1) the negative provisions which require respondent to cease and desist from engaging in unfair labor practices, and (2) the affirmative provisions which require respondent to offer reinstatement with back pay to five named individuals. We will consider these two portions of the order separately, and show that as to neither must the Board's order be predicated on a finding that the men involved were employees.

(1) The cease and desist provisions of the order require for their support only a finding of violation of one of the subdivisions of Section 8 of the Act. Section 8 (3) of the Act makes it an unfair labor practice for an employer "by discrimination *in regard to hire* or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." This provision manifestly is not limited in application to an employer's conduct toward persons with whom he has a preexisting relation of employment. The language quoted specifically refers to "discrimination in regard to hire," and was obviously intended to apply to an employer's conduct in refusing employment to union members on the sole ground of such membership—not merely to the dis-

charge of persons already employed. Were this not so, there would be nothing in the statute to meet the evil of the yellow-dog contract to which, it is public knowledge, the intention of the Congress was directed.

Nor has the status as employees of the persons who are the subject of discrimination any necessary relevance to the issue of violation of Section 8 (1) of the Act. That section makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." But coercion of employees manifestly may be accomplished by discrimination against those who are seeking employment. Each instance of discrimination because of union activity, be the victim an employee or not, is an open warning to those already employed, and constitutes a coercive interference with the rights of self-organization guaranteed to those employees in Section 7 and protected by Section 8 (1). Since discrimination against an applicant for employment because of his union membership would affect all the employees, it would plainly support a cease and desist order based upon Section 8 (1) of the Act.

Judge Mathews' holding that the men to whom the Board ordered respondent to give employment were not "employees" within the meaning of the Act (R. 90–91) thus affords no warrant—even if it were otherwise correct—for his refusal to en-

force the negative provisions of the Board's order. Judge Wilbur's refusal to enforce those provisions is even more patently erroneous. His reasoning—centering upon the meaning of the word "reinstatement" (R. 118–119)—does not even purport to be relevant to the authority of the Board to order respondent to desist from its violation of Sections 8 (3) and 8 (1). The Board's power to order reinstatement is a power to grant specific and affirmative relief, entirely separate from its preventive power to issue cease and desist orders.

(2) The power of the Board to order reemployment of former employees presents a distinct question. Section 10 (c) authorizes the Board "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." The particular authority expressly vested in the Board to order the "reinstatement of employees" is not part of an enumeration implying exclusion of any other similar authorization, but rather the contrary. The report of the Committee on Labor of the House of Representatives states of the power vested in the Board by Section 10 (c) (H. Rep. 1147, 74th Cong., 1st Sess., at p. 24):

> The orders will of course be adapted to the needs of the individual case; they may include such matters as refraining from collective bargaining with a minority group, recognition of the agency chosen by the majority for the purposes of collective bargain-

> ing, posting of appropriate bulletins, refraining from bargaining with an organization corrupted by unfair labor practices. The most frequent form of affirmative action required in cases of this type is specifically provided for, i. e., the reinstatement of employees with or without back pay, as the circumstances dictate.

It has been demonstrated that refusal to reemploy former employees because of their union activities is an unfair labor practice (see pp. 50–52, *supra*). The particular grant of power to reinstate employees does not preclude authority to require reemployment of former employees any more than it eliminates the power to order other forms of affirmative action, such as those enumerated in the House Report, which are found by the Board in administering the Act to be necessary to effectuate its policies.

It follows that the Board's power to require respondent to give positions, with back pay, to the five men here involved is subject to the single test of whether such action will effectuate the policies of the Act. The determination of the Board that such action is an appropriate means of carrying out those policies will not be disturbed if supported by the evidence adduced. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.; National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, both decided February 28, 1938. On the facts here presented, restoration of

the five men to their former positions was both appropriate and necessary to dissipate the coercive and interfering effects of the discrimination practiced against them.[21] For this reason, it is submitted, the Board's order was clearly authorized by the Act, whether or not the five men were found to satisfy the statutory definition of "employee." Enough has already been said (see pp. 43–49, *supra*) to show that in neither event does a construction of the Act authorizing such an order render it unconstitutional.

III

THE BOARD'S FINDING THAT RESPONDENT REFUSED TO REINSTATE CERTAIN OF ITS EMPLOYEES BECAUSE OF THEIR UNION ACTIVITY IS SUPPORTED BY EVIDENCE

In the court below respondent contended that the Board's finding that five employees had been refused reinstatement because of their union activity was not adequately supported by evidence. Judge Garrecht, in his dissenting opinion, declared that

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[21] Upon an issue of this character, the technical status of the five men as "employees" under Section 2 (3) is, of course, not controlling. The long and satisfactory records of the five while in respondent's employ, absent in the case of a new applicant for employment, clearly point the equities in their favor by removing all doubt that they would now be at work were it not for their union activities. Questions of fitness, personality, etc., of a new applicant which might render doubtful the question whether, in directing his employment, the Board was merely requiring an act which would have been done in any event were it not for the applicant's union activity, are clearly not involved here.

there was evidence to support the finding; but the majority of the court did not pass upon the question. We think that the contention is so insubstantial that in the event that respondent renews it this Court will have no difficulty in disposing of it here, as was done in similar circumstances in the Labor Board cases at the last term.

Section 10 (e) of the National Labor Relations Act declares, and this Court has held, that the Board's findings of fact are conclusive if supported by evidence. *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board,* 301 U. S. 142, 147; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.,* decided February 28, 1938. And in the *Greyhound* cases this Court pointed out that it is for the Board and not for the courts to draw inferences from the facts before it. See also *Federal Trade Commission* v. *Pacific States Paper Trade Association,* 273 U. S. 52, 63; *Federal Trade Commission* v. *Algoma Lumber Company,* 291 U. S. 67, 73.

In the light of these governing principles we turn to an examination of the evidence before the Board bearing upon the reasons for respondent's refusal to reinstate the five men in question. The circumstances leading up to the strike on October 4, 1935, have already been related. See pp. 29–31, *supra.* The strike was not effective outside of San Francisco, and by Monday, October 7, after respondent had brought operators from other stations to San Francisco, the strikers in that city were wavering

(R. 21–22, 182–183, 983, 1025–1026, 1028–1031, 1055–1056). That night two employees on their own responsibility communicated with Jorgensen, respondent's traffic manager in San Francisco,[22] and agreed with him to call immediately a meeting of the men in Jorgensen's presence to decide whether the men should return to work (R. 22, 597–598, 601, 843). It was understood that this Monday meeting was to be of the men as employees, not as A. R. T. A. members (R. 23, 632–633, 635–636). Jorgensen furnished the two volunteers with a list of names of the San Francisco operators for the purpose of calling the meeting, but checked the names of eleven men whom he said would have to make applications for reinstatement to be passed on by Stone, respondent's vice-president, in New York (R. 22–23, 600–601, 628–630, 774–775). The rest of the men were to be permitted to return without this procedure. Jorgensen knew of and acquiesced in the volunteers' deliberate failure to notify the eleven men on the list when informing the other operators of the meeting by telephone (R. 23, 630–633, 702–703, 762, 773, 775).

At the meeting, which began at 4:30 Tuesday morning, Jorgensen repeated respondent's position that all the operators could return to work immediately with the exception of the eleven; and the

[22] Jorgensen was in immediate charge of the San Francisco operators, with full authority to hire and fire; he was assisted by three or four supervisors (R. 19, 740, 749, 751, 873, 1006–1007).

list of those men, which included Loudermilk, Bash, Rone, and Palmer, four of the five men ordered reinstated by the Board, was read twice (R. 23, 322, 426, 671–672, 813–814, 866–867, 908). In the discussion which ensued it was pointed out that a return to work would mean the jobs of the eleven men, but the men voted to return to work, and did so immediately (R. 23–24, 324–326, 425–426, 795, 910–911).

By late Tuesday afternoon all of the operators, including five of the men on the list (those excepted including Loudermilk, Bash, Rone, Palmer, and Salisbury, the Chairman of the local, who was in New York at the time) had returned to work (R. 24). Loudermilk and Palmer, after repeated futile attempts to see Rodman, respondent's general superintendent, finally succeeded at six o'clock Tuesday afternoon and were told to fill out applications to be passed on by Stone in New York (R. 24, 328–330, 427–428, 1007–1009, 1046–1047, 1068–1069). Bash and Rone received the same instructions from Jorgensen on Wednesday (R. 24, 197–199, 474–475, 829). Rodman sent the four applications to Stone with the recommendation that since no vacancies existed they be placed on file; this recommendation was approved (R. 24, Bd. Ex. 4, at R. 1102–1103; 6, at R. 1119–1120; Resp. Ex. 3, at R. 1131; 11, at R. 1138–1139). None of these men had been reinstated at the time of the hearing.

The four men thus refused reinstatement were, together with Salisbury (who was discharged when

his leave of absence expired), the recognized leaders of Local No. 3 and the most active in its affairs (R. 25–27, 156–157, 159–160, 166, 172–173, 186–187, 196, 292–310, 404, 405–406, 410–411, 422, 461–462, 468–469, 470–471). Their activities were well known to respondent (R. 28, 749, 847–848, 967–968, 987–988, 1063). Theirs were four of the first six names on the list of eleven; the other two, York, a supervisor, and Salisbury, were those of men who were also active in union affairs (R. 27–28, 166, 170–172, 245–246, 871–872). The rest of the list was composed of inferior operators, whereas Palmer, Rone, Loudermilk, Bash, and Salisbury were "Class A" operators of high seniority and earning the top salary of $180 per month; they were among respondent's best (R. 27–28, 136, 291–292, 404, 460–461, 743, 758–759, 780, 837–838, 949, 991). Jorgensen could not remember ever having laid off an operator of their classification (R. 34, 835–836).

Respondent explains the presence of the first four on the list on the ground that they were guilty of what can only be termed petty infractions of rules at various times prior to the strike—infractions for which they had never been disciplined (R. 33, 756–759, 767–769, 837–838). The reason given why Salisbury, who was subsequently discharged, appeared on the list, namely, that he had violated the terms of his leave of absence, is obviously sham (R. 34, 770). Respondent frankly admits that York, a supervisor, was included because his loyalty was doubted on the basis of remarks made by him dur-

ing the strike; it was also felt that a supervisor should not strike (R. 27–28, 33, 763–764). York was demoted from his supervisory position after the strike (R. 27–28, 872–873). The remaining five men were not active in the union and were on the list because of their inefficiency (R. 33–34, 764–765, 991). The divisible nature of the list was recognized at the meeting where it was presented (R. 34, 326–327).

The Board found that the reason respondent placed Loudermilk, Rone, Bash, and Palmer on the list and subsequently failed to reinstate them was their activity in Local No. 3. It is respondent's position that, regardless of why they appeared on the list, they were not reinstated because at the time they applied there were no jobs available (R. 31, 794, 1016, 1059–1060). Respondent contends that on Monday afternoon it was thought that as many as eleven of the strikebreakers might elect to remain in San Francisco, decreasing by that number the positions available for the striking operators (R. 28–29, 747–748, 776). Jorgensen, after discussing the "overall general satisfaction" of the various operators with Rodman, prepared a list of the eleven least "desirable" men (R. 28–29, 750–752, 762–763, 1051–1053). After reinstatement of the other operators, men from this list were to be carefully selected for positions in the event some of the strikebreakers did not stay (R. 29, 772–773, 812–814, 825–828). However, all of those on the list except Loudermilk, Bash,

Rone, Palmer, and Salisbury returned to work by 4 o'clock Tuesday afternoon (R. 30, 955–957). By that time respondent's officials at San Francisco knew that only five or six of the strikebreakers wished to remain (R. 30, 957). Rodman telephoned Stone in New York, reported that a full staff was working, named the four operators who were still out, and recommended that those on the list of eleven who were at work be retained since they were good operators and there was no "serious objections to them"; the reason why they had been put on the list—inferior ability—was apparently no longer persuasive (R. 30, 957–958, 1012–1013). Stone approved this recommendation, and the books were closed (*Ibid.*). That the four men not returned to work were also the leaders of the union is, in respondent's view, mere coincidence (R. 32).

The Board pointed out that respondent altered the standard governing selection among the men on that list at a time when a shift would serve to eliminate the union leaders (R. 32). Prior to the time when only these four men remained outside, it had apparently been respondent's intention and the men had been informed that each man on the list was to be carefully weighed against the others in determining who was to be reinstated; no mention had been made that priority of application might be significant (R. 32, 29, 772–773, 812–814, 825–828). The ultimate decision was to be made in New York by Mr. Stone, a fact which indicated

that several hours difference in the time of application would not be material. When it was realized, however, that the four union leaders were the last to apply, the rule of priority in application was suddenly adopted (R. 32, 828). The Board held that this was done for the purpose of discriminating against the four men and thus discouraging membership in the union.

The placing of the names of these four men on the list was the first step leading to the company's refusal to reinstate them. The Board found that their names had been placed on the list solely because of their union activity. If it had not been for their inclusion on the list, these four employees would not have been the last to apply for reinstatement (R. 35–36). Respondent contended that Jorgensen had told the men at the meeting that it was his intention that all eleven men whose names had been checked off immediately return to work, but only on a temporary basis until after their applications for reinstatement had been approved. If this was his intention, it was intelligible to no one save himself; those at the meeting understood that the operators named would not be permitted to work until their applications had been approved by Stone in New York (R. 35–36, 322, 436, 564–565, 761–762, 775–776, 813–814, 861–864, 865–866, 867, 909). Thus respondent's attitude indicated not only that the eleven would not be taken back at all, but also that there was no need of haste in ap-

plying. As the Board found, this lulled the four men into yielding to the natural disinclination of strike leaders to return before all their followers had surrendered (R. 35–36). Application of the "first come, first served" rule in these circumstances, the Board found, was clearly calculated to discriminate against the union leaders (R. 36).

The finding that the cause of such discrimination was the union activity of the men does not rest solely upon the natural inferences arising from their positions in the local, their long terms of service and proven excellence as operators, and the unconvincing reasons advanced by respondent for putting them on the list. When Loudermilk and Palmer applied to Rodman for reinstatement, the former inquired whether the chances of approval by Stone were good (R. 26, 1008–1009). Rodman testified that he had answered in the negative and had pointed out that Loudermilk had a "national reputation," being known as "a very active—or something of an agitator" (R. 26–27, 1009).[23] Re-

[23] Rodman added, "I may have put it a little stronger than that. I remember I told Mr. Loudermilk that in my opinion many of the company's troubles had been stirred up by him" (R. 26–27, 1009). Loudermilk's memory was more distinct. He testified that Rodman said: "Well, now, Loudermilk, why should he (Stone)—after all, you know you are the real leader—the ringleader of this organization. Why, you are the No. 1 public enemy as far as we are concerned; you are the head of the list! Why, you have a national reputation for causing us trouble. * * * This Union proposition is controlled by a bunch of agitators and reds; and you know it just simply has to be stopped" (R. 26–

spondent's treatment of Salisbury, chairman of the local's point to point division, is also illuminating, although no relief for his discharge was sought in the present case. Shortly after the strike, during which he was on leave of absence, Salisbury applied for permission to resume work (R. 27, 998–1000). He was required to fill out a questionnaire; the questions concerned his "loyalty" to respondent and his views on working conditions (R. 27, Bd. Ex. 21, at R. 1117; R. 998, 1064). In his answers, which were forwarded to Stone, Salisbury defended his union activity, stated that he could be loyal unless "loyalty" meant not belonging to a union, and criticized respondent's discrimination against members of A. R. T. A. (R. 27, Bd. Ex. 21 at R. 1117; R. 1066). When Salisbury's leave of absence expired he was discharged (R. 27, 1000, 1067–1068).

Phelps, the fifth employee ordered reinstated by the Board, was not an operator at the central San Francisco office, but was manager of the branch office located in the Stock Exchange (R. 36, 507). He was a member of Local No. 3, but, unlike the other four, was not outstandingly active in its affairs (R. 37, 507, 536–537). He joined in the strike on October 5 and learned of its collapse at 7 a. m. on Tuesday, October 8 (R. 37, 508, 515, 532). He

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27, 330). Rodman, in his testimony, denied that he had called Loudermilk "Public enemy No. 1" or "ringleader" but admitted charging that A. R. T. A. had communist affiliations (R. 1010–1011). Palmer corroborated Loudermilk's version of the incident (R. 428).

failed in an immediate attempt to reach Dewey, his immediate superior, by telephone and thereupon proceeded to the Stock Exchange office where he was denied admission (R. 37, 515–516, 532, 1013). He tried to see both Dewey and Rodman at 8 a. m., but was informed they were out (R. 37, 516). He waited and, at 9 a. m., saw Dodd, secretary of respondent and Rodman's assistant (R. 37, 516). Dodd promised to talk to Rodman, and Phelps waited in the outer office until 1 p. m., when Dodd stated that he had talked to Rodman, but had forgotten to mention Phelps and suggested that the latter return at 3 p. m. (R. 27, 517). Phelps entered Dodd's office at three; Rodman, who was inside, exclaimed angrily: "Get out of here! Don't keep coming around here! I don't want to talk to you" (R. 37, 517, 521, Bd. Ex. 7 at R. 1121–1122). The same day Dewey told Phelps to file an application, which he did (R. 37, 518–519). Rodman ignored Phelps' efforts to see him the next day, and Dewey told Phelps that his job had been given to one of the strikebreakers and that "You are out of the Stock Exchange for good" (R. 37, 520).

Rodman testified at the hearing that Phelps was not reinstated because he did not apply until 3:30 p. m. on Tuesday when he first saw Dewey, whereas his position had been filled at noon (R. 38, 1016–1017).[24] But he had applied to Dodd, a responsible

[24] It was also suggested that inefficiency and Dewey's alleged suspicion of Phelps as a "leak" to Western Union caused his discharge; in support of this respondent showed that about three months prior to the strike the floor manager

official, at 9 a. m., and had been attempting to see Dewey or Rodman all morning. Dewey called these facts to Rodman's attention, and described them as in effect advancing the time of application "to early in the morning of October 8th" (Bd. Ex. 8, at R. 1122–1123). To balance this unsatisfactory explanation, and revealing the true cause of Phelps' discharge, is Rodman's testimony that "We did not approve of a commercial man, in charge of an office, becoming a member of an organization such as A. R. T. A." (R. 39, 1050–1051). This admission establishes beyond all dispute what is in any event readily inferable from respondent's unexplained refusal to reinstate Phelps—that the reason therefor is to be found in Rodman's disapproval of Phelps' membership in Local No. 3.

The Board found that Rone, Bash, Palmer, Loudermilk, and Salisbury—all concededly among

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of the Stock Exchange requested Dewey to dismiss Phelps, which request was promptly rescinded by the president of the Exchange (R. 38, 1014–1015, 1040). On October 8 the president wrote a letter to Dewey on behalf of Phelps, describing him as "keen, alert, courteous, and active in his duties" and "a decided asset to your Company" (Bd. Ex. 9, at R. 1123). Another official of the Exchange supported this opinion, praising Phelps' ability and loyalty to respondent (Bd. Ex. 10 at R. 1123–1124). Dewey himself noted in a memorandum to Rodman dated October 16 that Phelps' "services as a contact man and as an operator have always been of a high order" (Bd. Ex. 8, at R. 1122–1123). In view of these circumstances and the fact that no action was taken against Phelps prior to the strike, the Board was fully justified in rejecting these purported explanations of his discharge (See R. 38).

respondent's best operators and also the leaders of the union—"were placed on the list because of their union leadership and activity" (R. 35). This finding, which is fully supported by evidence, would without more show that the respondent had coerced and discriminated against employees because of their union activity. But the Board did not rest its decision on this ground alone, since it also found (1) that respondent had caused these men to believe that they were being permanently blacklisted because of their union activities and had therefore been responsible for their not applying immediately for reinstatement (R. 36), and (2) that respondent had deliberately shifted to a "first come, first served" basis for reinstatement of the employees on the list of eleven, without notifying any of the men, only when it discovered that all of the men except the leaders of the union had applied for reinstatement (R. 32).

In his dissenting opinion Judge Garrecht declared (R. 92):

> There is evidence to sustain the findings. The evidence is convincing that the five employees were discharged by the company because of their efforts and prominence in the organization work of the union and with the strike against the company.

It is difficult, within the compass of this brief, to give an adequate impression of the extreme care with which the Board considered every substantial item of the evidence and the contentions made by

respondent. The evidence relied upon by the Board is in large part uncontroverted; where there was conflict the Board relied to a great extent upon the testimony of respondent's officials and of "loyal" employees who had been instrumental in defeating the strike. On this record we think there can be no question that the great weight of the evidence indicates that respondent discriminated against these men because of their union activity.

IV

THE PETITION FOR WRIT OF CERTIORARI WAS FILED WITHIN THE REQUISITE STATUTORY PERIOD

Respondent contends that the petition for writ of certiorari in this case was not filed within ninety days after entry of judgment in the court below, as prescribed by statute (28 U. S. C., sec. 350). The argument, in brief, is that the action of the court below in granting a rehearing was a nullity and that the time within which certiorari must must have been sought is, therefore, to be computed from the date of entry of the original judgment.[25]

The Board's petition for rehearing in the court below was filed within thirty days—as required by

[25] The first judgment of the court below was entered January 11, 1937 (R. 104). The Board petitioned for a rehearing on February 9, 1937, and the petition was granted on May 17, 1937 (R. 105–108, 112). The second judgment was entered October 19, 1937, and, within ninety days after that date, on January 15, 1938, the Board filed its petition for certiorari (R. 124).

the court's rule—after entry of the original judgment denying the Board's petition for enforcement. Respondent contends (1) that, once having denied the Board's petition for enforcement, the court was without any jurisdiction whatsoever under the Act to grant a rehearing, and alternatively (2) that the court lacked jurisdiction because the petition for rehearing filed by the Board did not comply with the court's rules. Each contention is wholly devoid of merit.

A. THE POWER TO GRANT A REHEARING IS INCLUDED WITHIN THE JURISDICTION CONFERRED UPON THE COURT BELOW BY THE ACT

While the Act makes no express provision for rehearing, it vests in the circuit court of appeals "jurisdiction of the proceeding and of the question determined therein." Section 10 (e). The jurisdiction thus conferred clearly does not exclude—in the absence of express statutory provision—the inherent power of a court to correct its own errors on rehearing. See *Bronson* v. *Schulten,* 104 U. S. 410, 415; *United States* v. *Benz,* 282 U. S. 304, 306–307. Particularly is this true in view of the essentially equitable character of the decrees contemplated by the Congress. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 48–49. Thus, the Court doubtless has implied power to remand a case to the Board for further hearings, even where no additional evidence is to be taken. Compare *Helvering* v. *Rankin,* 295 U. S. 123, 131–133. Respondent is

forced to concede (brief in opposition, p. 8) that where the court has entered judgment *enforcing* an order of the Board it retains power over the judgment. Thus, it may cite an employer for contempt, if he violates the order, or presumably, within an appropriate time, may grant a rehearing. That the same power exists to correct an error adverse to the Board is indicated by this Court's action in the *Jones & Laughlin* case. There the Board petitioned for certiorari within ninety days after denial of a petition for rehearing in the circuit court of appeals, but more than ninety days after the original decree was entered. Respondent relies upon a supposed parallel in decisions under the Federal Trade Commission Act. The pertinent decisions under that Act do not support its contention. The circuit courts of appeals have exercised the power to grant rehearings under the Federal Trade Commission Act, just as did the court below under the present Act. *Federal Trade Commission* v. *Bayuk Cigar Co.*, 14 F. T. C. 708 (C. C. A. 3d); *Western Meat Co.* v. *Federal Trade Commission*, 4 F. (2d) 223 (C. C. A. 9th), modified and affirmed, 272 U. S. 554.

B. THE BOARD FILED ITS PETITION FOR REHEARING WITHIN THE TIME REQUIRED BY THE RULES OF THE CIRCUIT COURT OF APPEALS

The judgment of the Circuit Court of Appeals refusing to enforce the Board's order was entered January 11, 1937 (R. 104). On February 9, 29 days later, the Board filed a petition for leave to

adduce additional evidence and for rehearing (R. 105–108). Rule 29 of the Circuit Court of Appeals for the Ninth Circuit provides that "A petition for rehearing may be presented within 30 days after judgment." The Circuit Court of Appeals expressly stated that the petition in this case was "filed within time allowed by rule of court for filing of petition for rehearing" (R. 108).

The Circuit Court of Appeals heard oral argument on this petition on April 23, but postponed decision until after briefs could be filed (R. 108). Subsequently, on May 10, 1937, the Board filed with the court a motion for leave to file a supplement to the petition, together with the proposed supplement, in which it called the court's attention to the decision of this Court in the *Jones & Laughlin* and companion cases, and asked that the rehearing be granted in the light of those decisions (R. 108–111). On May 17 the court granted the petition for rehearing, the court's order reciting that it was based, *inter alia,* "Upon consideration of the petition of National Labor Relations Board, filed February 9, 1937" (R. 112). The court itself thus assumed that it was granting the original petition for rehearing, which was unquestionably filed within the time required by the rules.

Respondent argues that because the prayer in the Board's original petition requested a rehearing only in the event that additional evidence was adduced and new findings made, the court below was not warranted in treating the petition as one for

rehearing. The Board did ask for a rehearing.[26] There is no basis for a contention that the judgment of a court rendered upon rehearing may be assailed as a nullity on the ground that in granting the rehearing the court did not find it necessary to comply with all the conditions presented to the court as the basis for the rehearing—that is, in this case, remanding the case for the taking of oral testimony. Especially is this true where, as here, decisions of this Court have supervened, affording in themselves an independent ground for a rehearing.

C. EVEN WERE ITS RULE NOT COMPLIED WITH, THE COURT BELOW HAD JURISDICTION TO GRANT A REHEARING BEFORE THE EXPIRATION OF THE TERM AT WHICH ITS FIRST JUDGMENT WAS RENDERED

The conclusive answer to respondent's contention, however, is that the rehearing was granted during the term of court at which the original judgment was rendered. It is uniformly recognized, by this Court and the circuit courts of appeals, that when the term has not expired the court has jurisdiction to waive its own rules limiting the time

[26] The opening paragraph of the petition reads (R. 105–106):

"The National Labor Relations Board (hereinafter referred to as the Board) respectfully petitions this Honorable Court for leave to adduce additional evidence and for a rehearing in the above-entitled cause, and for an order directing such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript of the record herein, as provided for in Section 10 (e) of the National Labor Relations Act (49 Stat. 449; 29 U. S. C. Sec. 160)."

within which a rehearing may be applied for. *Henderson* v. *Carbondale Coal & Coke Co.*, 140 U. S. 25, 40; *Stone* v. *White*, 296 U. S. 596, 550, 298 U. S. 646, 299 U. S. 622, 300 U. S. 643, 301 U. S. 532;[27] *Basset* v. *United States*, 9 Wall. 38; *Irwin* v. *Missouri Valley Bridge & Iron Co.*, 275 U. S. 572; *Bronson* v. *Schulten*, 104 U. S. 410, 415; *Unitype Co.* v. *Long*, 149 Fed. 196 (C. C. A. 6th); *Burget* v. *Robinson*, 123 Fed. 262 (C. C. A. 1st); *United States* v. *Harris*, 286 Fed. 910 (C. C. A. 8th); *Omaha Electric Light & Power Co.* v. *City of Omaha*, 216 Fed. 848; *cf. United States* v. *Benz*, 282 U. S. 304, 306; *cf. Foster Bros. Mfg. Co.* v. *National Labor Relations Board*, 90 F. (2d) 948 (C. C. A. 4th).

Where, as here, one of the bases of the request for rehearing is a supervening decision of this Court indicating error in a prior judgment of the Circuit Court of Appeals, the circuit courts of appeals properly grant rehearings so long as the term has not expired. The rule of court fixing the time for filing a petition for rehearing "is entirely for the protection of the court. * * * Being for the protection of the court, clearly it can be waived

[27] In *Stone* v. *White*, *supra*, the petition for certiorari was denied October 14, 1935. 296 U. S. 596. The time for filing a petition for rehearing was extended until December 7, 1936, on which date the petition for rehearing was denied. 299 U. S. 622. On March 11, 1937, 94 days later, but within the same term, a motion for leave to file a new petition for rehearing was filed, and the petition for rehearing was granted on March 15, 1937. 300 U. S. 643.

when justice requires." *Burget* v. *Robinson, supra.* As was stated in *Unitype Co.* v. *Long, supra:*

> The rule which requires a petition to rehear to be filed within 30 days after the filing of an opinion is a rule of convenience, and should not be enforced where the point upon which a rehearing is asked is a reversal of the authority upon which our decision was made after the time for a petition to rehear, but before we had lost jurisdiction over the judgment by the expiration of the term.

CONCLUSION

For the reasons above set forth it is respectfully submitted that the judgment of the court below should be reversed with directions to enforce the order of the Board.

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56753—38——1

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 706

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MACKAY RADIO & TELEGRAPH COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

This reply brief is filed in order to reclarify the issues in the case, which have been confused in several important respects by arguments of respondent based upon unfounded assumptions and inaccurate interpretations of the record.

I

THERE IS NO BASIS FOR RESPONDENT'S CONTENTION THAT IT WAS CONVICTED OF AN UNFAIR LABOR PRACTICE WITH WHICH IT WAS NOT CHARGED

Respondent's contention (Point I, pp. 7–16) that "it was convicted of an unfair labor practice with

which it was not charged" is essentially a play upon words. It is utterly lacking in substance.

The contention rests upon the assertion that two distinct charges were involved in the proceedings; first, that respondent had been guilty of unlawful discrimination in "discharging" certain employees because of their union activities; and second, that respondent had been guilty of such discrimination in refusing to "reemploy" those men. The argument is that both these charges were stated in the original complaint; that the first was disclaimed at the outset of the hearing, and the case tried on the basis of the second; that the first was formally abandoned in the amended complaint; and that, the case having thus been tried upon the second charge, the Board thereafter by its order found respondent guilty of the first charge, upon which it had not been tried.

The simple answer is that there are not, and never were, two distinct charges involved in the proceedings. The single question presented is, and continuously has been, whether respondent violated Section 8 (3) of the Act in excluding certain men from jobs because of their union activity. That question arises upon a state of facts as to which there has never been the slightest misapprehension, and which were fully set forth by counsel for the Board at the outset of the hearing (R. 134–135). A strike occurred; the strike failed; and all the men but five (apart from Salisbury, who is not here involved) were permitted to return to work.

It is a matter simply of choice of words whether respondent's discriminatory conduct with respect to the five men in question be described as a "discharge of employees," a "discharge of former employees," a "refusal to reemploy employees," or as a "refusal to reinstate after a strike men who had not lost thereby for the purposes of the Act their legal status as 'employees.'" The first expression merely states in shorter form what is spelled out in the last; for under the statutory definition men on strike are employees, and an employer's refusal to reinstate (or reemploy) them may be characterized as discharging them. The Board found (R. 46) that "by refusing to reinstate to employment" five named employees, "thereby discharging said employees * * * the respondent did discriminate in regard to tenure of employment." For purposes of apprising respondent of the nature of the charge which it had to meet, the use of one of the above expressions rather than another has no importance whatsoever. All that is important is that respondent be informed of the substance of the charge against it. Any allegation that respondent was not aware of the facts of the unfair labor practices charged by the Board is without the slightest foundation.

Respondent claims that the use of one rather than another of the above expressions completely changed the theory of the Board's case. It is asserted that the theory of the amended complaint was that respondent had discriminated in

hiring persons who were not employees, that respondent was beguiled into the assumption that the Board was not claiming that the men were employees under the Act, and that accordingly respondent had not introduced evidence showing that the men involved were not employees, i. e., individuals "whose work had ceased as a consequence of, or in connection with, a current labor dispute."

The basis of the argument is the claim, contrary to the fact (R. 8), that there was no allegation in the amended complaint that the men were employees (respondent's brief, p. 10). The amended complaint[1] alleges (R. 8) that respondent "did refuse to reemploy" five named individuals, "operators *employed* by the respondent at the San Francisco office," because of their union activities, and "has at all times since said date refused to reem-

[1] The inaccuracies in respondent's argument are typified by the statement, easily verifiable, that the amended complaint "has been so *industriously* ignored by the Board's counsel at all times since the Board's decision was filed" and that "the Board's counsel, throughout their brief herein, *meticulously* ignore the amended complaint" (respondent's brief, p. 9). Point I B, pages 33–37 of the Board's brief, the only point which deals at all with the pleadings, is devoted entirely to a consideration of the amended complaint; respondent should have taken the trouble to read the Board's brief before making unfounded assertions with respect to it in an effort to give this Court an erroneous impression as to the manner in which the Board had proceeded.

ploy *these said employees*" [italics supplied].[2] The men involved are thus twice described as employees. This put respondent on notice that the Board regarded the men denied reinstatement as employees under the Act and that the Board did not rest its case, as respondent now contends, on the theory that the men were *former* employees. Nevertheless, throughout its argument, respondent refers to the amended complaint (although without ever quoting it) as if it changed this case to one involving persons *formerly* employed, and asserts that the amendment restricted the issue of fact solely to the question of wrongfully refusing to employ former employees (respondent's brief, pp. 2, 9–13). Respondent's repeated interpolation of the word "former" in purporting to summarize the allegations of the amended complaint gives a completely erroneous impression of what was in fact alleged.

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[2] Respondent also states (brief, p. 61) that the charges filed with the Board alleged solely a refusal to "re-employ." The charge specifically stated that respondent's officials "did discriminate, interfere with, intimidate, and coerce the members of said union by refusing *to reinstate* all workers without prejudice who were then on strike * * * (R. 1). The word "re-employ" was likewise used (R. 2), indicating their synonymity. That respondent was not misled concerning the Board's position on the status of the five men is shown by the following observation of respondent's counsel while examining one of them at the hearing:

"I understood that the position taken is that he is an employee of the company, that so long as he has no other employment he considers himself that he remains an employee" (R. 385).

All that remains of respondent's assertion with respect to the amended complaint is that it does not specify that the men were employees *because* they had ceased work as a consequence of or in connection with a labor dispute. But this objection goes only to the definiteness of the complaint, a matter which could easily have been remedied if respondent had raised the question before the Board, and not to the legal theory upon which the case was based. Certainly nothing in the complaint indicated that evidence that the men were not employees was irrelevant, or precluded respondent from proving that the men had not ceased work in connection with the current labor dispute. On the contrary, the description of the men squarely raised the issue of their status.

Respondent seeks to give the impression that it was deprived of its "day in court" by not being apprised of the Board's contention that the men discriminated against were employees who had ceased work in connection with a labor dispute, and that the reason it did not make the objection before the Board, as required by Section 10 (e) of the Act, was "that it did not know or suspect until after the Board's decision had been rendered" (respondent's brief, p. 15) that the Board would act on the theory which respondent claims it finally adopted. The only basis for respondent's contention, as we have shown, is the failure of the Board to specify that the employees were persons who

had ceased work in connection with a current labor dispute. That this objection was not made before the Board only because it never occurred to respondent or its counsel that the controversy between it and its San Francisco operators was not a labor dispute is demonstrated by the fact that respondent never made the argument to the Circuit Court of Appeals until after Judge Mathews had suggested it in his opinion.[3] Respondent does not deny that the Board's *decision* raised the issue; no omission on the part of the Board can explain the failure of respondent to raise the point when the case reached the Circuit Court of Appeals. In the long list of reasons for not enforcing the Board's order which was formally presented to that court in respondent's answer to the Board's petition for enforcement (R. 54–60), there is no reference whatever to this question. It thus appears that the alleged indefiniteness of the Board's complaint was not the real reason for respondent's failure to raise the objection before the Board, and that the entire argument, now pressed so vigorously, came as an

[3] Respondent has not denied the assertion in the main brief for the Board that—

"From the record it is perfectly clear that not until after Judge Mathew's opinion was handed down did it occur to respondent that there might be in the respect in question any technical inadequacy in the complaint as amended (Br., p. 37).

afterthought to respondent's counsel after Judge Mathew's opinion.[4]

The hollowness of respondent's contention is also shown by the actual reasons which underlay the minor amendments in the complaint which figure so largely in the structure of respondent's argument. The original complaint alleged that respondent *"on October 5, 1935,* * * * did discharge" certain named persons, "operators employed by the respondent * * * and has at all times since said date refused to reemploy these said employees * * *." Since the strike commenced at midnight on October 4, or the first moment of October 5, this allegation was susceptible of the interpretation that the Board meant that respondent had in some way caused the strike and so "discharged" its employees. This, of course, was not the theory of the complaint; nor was respondent's conduct on the first day of the strike in any way in question. The conduct in question occurred at the conclusion of the strike, beginning October 7. In the amendment, in order to make clear that the issue concerned the circumstances of resumption of work at the end of the strike and not

[4] We do not, of course, question respondent's right to make arguments here not presented to the Circuit Court of Appeals; respondent's failure to make the argument on the first hearing in the court below is emphasized only because it demonstrates that the charge that respondent was misled by the claimed differences between the Board's pleading and its decision is unfounded.

of severance at the beginning, the word "discharge" was omitted and the proper dates inserted. Paragraph 4 of the amended complaint reads:

> The respondent * * * during the period approximately October 7, 1935, to October 10, 1935, inclusive, * * * did refuse to reemploy [certain named persons] * * * operators *employed* by the respondent at the San Francisco office and has at all times since said date refused to reemploy *these said employees* * * *. [Italics supplied.]

The succeeding paragraphs were similarly changed.

Respondent's argument rises to no higher dignity than that of a play on the word "discharge." The word had originally been used in connection with the events of October 5 and never with those connected with the resumption of work after the strike from October 7 to October 10. Because of the possibly misleading connotations of the word it was eliminated from the complaint. In its order the Board again used the term "discharge," but in a different connection—applying it to respondent's discriminatory refusal to reinstate persons who were employees within the statutory definition. The description of the respondent's conduct as a "discriminatory discharge" amounted to no more than a legal characterization of respondent's conduct in "refusing to reemploy these said employees"—a characterization which might at any time have been applied to that conduct without the slightest embarrassment to respondent's defense.

Certainly the use of the word "discharge" in the order was not a return to an abandoned charge.[5]

II

THE EVIDENCE AND THE FINDINGS SHOW THAT THE SAN FRANCISCO OPERATORS CEASED WORK AS A CONSEQUENCE OF AND IN CONNECTION WITH A CURRENT LABOR DISPUTE AND THEREFORE THAT THEY WERE EMPLOYEES WITHIN THE TERMS OF THE ACT

In Point II of its brief, respondent contends that the Board failed to find that the five men were employees of respondent in that they ceased work in connection with a current labor dispute [Section 2 (3)]. The substance of this contention is that the findings are so ambiguous as to be open

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[5] Respondent argues (brief, p. 11) that the Board's order, in requiring respondent to cease and desist from discharging employees, supports its contention that the Board decided the case on the theory of discharge after trying it on the theory of refusal to hire former employees. The entire order of the Board shows that the Board decided that respondent's discriminatory conduct in refusing to give the five men their positions constituted a violation of Section 8, subdivisions (3) and (1) of the Act, regardless of whether the men were still employees or former employees. This is shown by the fact that the affirmative provisions of the Board's order referred to reinstatement of the employees to their former positions, whereas the cease and desist provisions of the Board's order referred to "discharge" of employees. (R. 47–48). Moreover, the use of the word "discharge" in the cease and desist provisions of the order is entirely appropriate regardless of whether the unfair labor practice consisted of discharge or refusal to reinstate. Clearly in cases of discrimination the Board is empowered to order a respondent to refrain from discriminating against employees in the future by discharging them for union activity.

to the inference that the strike which occurred was not a "controversy concerning terms, tenure or conditions of employment * * *" [Section 2 (9)].

In its Answer to Petition for a Writ of Certiorari respondent deemed it an "inescapable inference" from the Board's findings that "the strike in San Francisco was a sympathetic strike in aid of the strikers in New York," that is, respondent's point-to-point employees at the New York office (pp. 21–22). By a change in the inferential process, respondent now concludes that the strike, though still sympathetic, was a "sympathy strike for the marine operators," who were not employees of respondent (respondent's brief, p. 19).

Cavalierly ignoring the Board's detailed and readily intelligible findings, respondent asserts that there is no finding that the negotiations, whose collapse resulted in the strike at San Francisco, concerned the agreement presented on behalf of the point-to-point operators. There are only two agreements referred to in the Board's decision: the point-to-point agreement and the marine agreement (R. 20). The Board found that the point-to-point and marine operators resolved upon joint action *on the two agreements,* so that one could not be adopted to the exclusion of the other, "and that the Mackay officials should have until September 23 to execute *the agreements* unless the A. R. T. A. officers *negotiating such agreements* believed ne-

gotiations were proceeding in a satisfactory manner" (R. 21, italics supplied).

The English language has lost its meaning if the Board did not find, in these sentences, that the negotiations with respondent concerned the agreements A. R. T. A. was presenting on behalf of both its point-to-point and marine members. The unsatisfactory counter-offer made by respondent during the negotiations offered wage increases for point-to-point operators at specified land offices, not including San Francisco (R. 1101). There is no ambiguity, as respondent asserts.

On the basis of an assumed hiatus in the findings, respondent, by speculation, builds up a fanciful structure in purported explanation of why the strike occurred. This structure is in essence and conclusion wholly inconsistent with the Board's detailed findings in regard to the sources and issues of the conflict between respondent and its point-to-point operators at San Francisco, summarized in our main brief (pp. 29–31). There we termed respondent's contention that the strike in San Francisco was a sympathetic strike in aid of the strikers in New York "in the most exact sense frivolous" (p. 31). This characterization is equally applicable to respondent's new contention that the San Francisco operators went on strike in sympathy with the marine operators.

Were this contention true, which it patently is not, the strikers would still be "employees" within the meaning of the Act. Even were the strike

wholly a sympathetic one, the San Francisco operators would nevertheless have ceased work in connection with a "labor dispute" within the statutory definition, which expressly excludes the requirement that "the disputants stand in the proximate relations of employer and employee" (section 2 (9)). Cf. *New Negro Alliance* v. *Sanitary Grocery Co.*, decided March 28, 1938; *Lauf* v. *E. G. Shinner & Co., Inc.*, 58 S. Ct. 578.

But, as we have seen, the strike clearly involved differences between respondent and its point-to-point operators at San Francisco. Respondent's argument that the A. R. T. A. officials prematurely abandoned negotiations cannot serve to change the essential nature of the controversy and dispute which ensued. Vigorous assertions that the Board did not find that the negotiations had in fact reached a stalemate are beside the point. No charge is here involved that respondent failed to bargain collectively in violation of Section 8, subdivision 5, of the Act. The degrees of fault for the strike are not pertinent. Had respondent's operators presented demands for a wage increase and, without negotiation, gone on strike because they deemed acceptance of their demands improbable, the strike would clearly be a labor dispute. The *subject* of the dispute, and not the *justification* for it, determines its nature as a "labor dispute" both under the Act and in universal usage of the term.

Aside from its patent irrelevance to the issue whether a labor dispute was found to have occurred

and did occur, respondent's contention that the A. R. T. A. negotiators prematurely abandoned negotiations is speculation, pure and simple. It finds support in neither the Board's findings nor in the record. It purports to be based upon the Board's finding (R. 21) that the A. R. T. A. negotiators "decided that a strike was advisable in view of the unsatisfactory state of the negotiations" which, respondent contends, is not a finding that negotiations failed, but merely a finding that the employees abandoned negotiations. From this respondent infers that there was no controversy constituting a labor dispute. This inference could only be justified on the absurd assumption that the employees walked out of the negotiations without having disagreed with the employer on any of the matters under discussion and then proceeded to call a strike for no reason at all. Upon the basis of this unwarranted inference, contrary to the facts, respondent throughout its brief characterizes the action of the union representatives as walking out in the midst of peaceful negotiations without justification. Of course, the fact of the matter is that because of this unsatisfactory state of the negotiations the men struck as a means of obtaining the agreement, negotiations to that end having failed. In any event, regardless of whether the disruption of the negotiations was justified, the fact that a strike resulted therefrom demonstrates conclusively that there was a labor dispute.

III

THE BOARD'S ORDER OF REINSTATEMENT RESTS UPON RESPONDENT'S ILLEGAL DISCRIMINATION AGAINST THE FIVE MEN ORDERED REINSTATED, NOT UPON THE POWER OF THE BOARD TO ORDER REINSTATEMENT OF ALL STRIKERS

Respondent contends in Point III of its brief that the Board's order directing reinstatement of the five men involved in this case was not authorized by the Act (respondent's brief, pp. 24–40). In support of this contention respondent presents, as determinative, issues which are wholly extraneous to the present case and assigns to the Board positions on those issues which it has never taken. Thus, respondent states that unless the Board is authorized to order the reinstatement of all strikers in every case where their demand therefor is rejected, whether or not the strike was provoked or prolonged by unfair labor practices, the order in the present case cannot be sustained. Respondent then interprets the Board's position as an assertion that it has such power under the Act, that the Act "guarantees the striker his job whenever he wants it" and argues that the Act cannot stand this construction (respondent's brief, pp. 27, 39–40).

Respondent's argument rests upon a gross misstatement of the Board's position and the issues involved here. The Board has never con-

tended, in this case or any other, that an employer who has neither caused nor prolonged a strike through unfair labor practices, cannot take full advantage of economic forces working for his victory in a labor dispute. The Act clearly does not forbid him, in the absence of such unfair labor practices, to replace the striking employees with new employees or authorize an order directing that all the strikers be reinstated and the new employees discharged. Admittedly the strikers are not "guaranteed" reinstatement by the Act.

It is clear that an order of reinstatement is not authorized under the Act unless there has been an unfair labor practice. The Board's powers are in the most exact sense remedial; reinstatement cannot be directed unless the Board finds it necessary to remedy the employer's unfair labor practices. Thus, where a strike is caused by an unfair labor practice an order of reinstatement of the strikers is justified. *National Labor Relations Board* v. *Remington Rand, Inc.* (C. C. A. 2d, February 14, 1938). Similarly, where the strike is not caused by an unfair labor practice but where, during the strike, the employer commits an unfair labor practice, such as a refusal to bargain with the representatives of his employees, reinstatement is ordered only to the extent that the strikers had not been replaced at the time of the unfair labor practice. The other strikers, for whom positions are not available, are placed on a preferential list. Thus

the employer is not required to discharge any new employees hired prior to the commission of the unfair labor practice. *Black Diamond Steamship Corp.* v. *National Labor Relations Board* (C. C. A. 2d, February 14, 1938); *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 58 S. Ct. 55; *National Labor Relations Board* v. *Carlisle Lumber Co.,* 94 F. (2d) 138 (C. C. A. 9th).

In the present case, as in *Mooresville Cotton Mills* v. *National Labor Relations Board,* 94 F. (2d) 61 (C. C. A. 4th) and *National Labor Relations Board* v. *Bell Oil & Gas Co.,* 91 F. (2d) 509, 93 F. (2d) 1010 (C. C. A. 5th), the Board directed the reinstatement of the particular strikers against whom the employer discriminated because of their union activities in selecting strikers for reinstatement. In these cases the exercise of the power is also remedial in every sense of the term: in each the Board found that, had the men not been discriminated against in violation of the Act, they would have been permitted to return to work.

It is far from the mark, therefore, to interpret the Board's order as "guaranteeing" their positions to strikers or restricting respondent's right to hire new employees to the exclusion of strikers. Admittedly an employer is fully within his rights under the statute in refusing to reinstate striking employees when he has legally filled their positions prior to the commission of any unfair labor prac-

tice. The Board did not question that right in this case. It did not hold a refusal to reinstate all the strikers violative of the Act. The Board found that, in *selecting* the five to be eliminated, respondent was guilty of discrimination forbidden by the statute.[6] The record shows (petitioner's main

[6] That the theory upon which the Board's decision was predicated is not that asserted by respondent is clearly shown by the Board's decision: "The respondent is therefore contending that such strikebreakers are entitled to the four positions in question in preference to the men who had held them at the time the strike had commenced and who because of union activity had temporarily severed their active work on those jobs but not their status as employees of the respondent. See Section 2, subdivision (3) of the National Labor Relations Act. It might be argued by these four operators that the granting of such a preference to the strikebreakers was a discrimination in regard to tenure of employment of the type forbidden by Section 8, subdivision (3) of the Act and that therefore their claim under the Act to the four jobs is greater than that of the strikebreakers. However, since we find that a decision on the point is not necessary to the final judgment in this case. we will not decide the matter. Instead, we assume merely for the sake of argument, that the respondent was entitled to retain these strikebreakers, and that such retention was not a discrimination within the meaning of Section 8, subdivision (3). But as a consequence of such retention it became necessary to refuse reinstatement to four of the San Francisco operators employed at the time of the strike. *In choosing the four to be in effect discharged, the respondent could not violate the provisions of Section 8, subdivision (3) and consequently a choice based upon discrimination for union membership or activity within the meaning of that subdivision would be unlawful. Thus the controlling question in this case is whether the respondent*

brief, pp. 58, 65) that in view of the superior efficiency of the men denied reinstatement, they would have been among those permitted to return to work if respondent had not discriminated against them because of their union leadership and activity.

In selecting strikers for reinstatement, the employer is not free to make his choice on the basis of union activity. He must exercise on a different basis his right to eliminate a number of the men. Had respondent done so, its failure to reinstate five of the strikers would not have been an unfair labor practice within the meaning of the Act.[7]

Respondent now concedes that it discriminated against four of the men because they were strike

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obeyed the mandate of that subdivision in the method it adopted and the selection it made" (R. 31). [Italics supplied.]

[7] Respondent's fear that enforcement of the Board's order would compel discharge of the five strikebreakers (R. Brief, p. 78), is baseless. Respondent was at all times, and remains, free to discharge any of the strikers on any basis other than union activities. Indeed, if the order of the Board is enforced and Rone, Loudermilk, Palmer, Bash, and Phelps restored to employment, any of these five may validly be included among those to be eliminated by selection according to such non-discriminatory standards as efficiency, seniority, etc., as respondent may choose. There is no ground whatsoever for respondent's assertion that the Board's order compels it to favor the strike leaders over the rank and file members or "guarantees" the former their jobs (respondent's brief, pp. 32–33).

leaders,[8] but argues that discrimination among members of the same union on the basis of degree of union activity cannot discourage membership in the union and therefore cannot constitute an unfair labor practice within the meaning of Section 8, subdivision 3, of the Act. Respondent therefore asserts that it is free to penalize the union leaders because, in respondent's opinion, the strike was not justified.

It is apparent that discrimination against union leaders because of their leadership is one of the most drastic forms of interference with self-organization. Nor can the Board or this Court draw meaningful distinctions between good and bad leaders and condone discrimination against the latter. On this record, it cannot be said that the leadership was at fault. The employees authorized the calling of the strike and answered the strike call to a man (petitioner's main brief, p. 30). There is no evidence that they were deceived or misled. Even were they, however, the abuse would seem to be one peculiarly suited to correction by the union members and not by respondent. Dis-

[8] The following statements in respondent's brief, we submit, support the statement in our text:

"We say that the preference in re-employment which was accorded herein to the rank and file members of the union, rather than to the leaders who led them into an unprovoked and disastrous strike, did not interfere or tend to interfere with any activity protected by or sought to be facilitated by the Act. * * * After all it is only common justice that if anyone must suffer because of this uncalled for strike, it should be the leaders who caused it" (pp. 32, 33).

crimination against union leaders, good or bad, is an unmistakable object lesson whose anti-union moral cannot be lost upon the employees. The discrimination because of union activity which respondent so freely admits was that prohibited by the express terms of the Act.[9]

Respondent urges that reinstatement of the leaders would not effectuate the policies of the Act. The declared policies of the Act are to protect commerce by preventing industrial disturbances which burden and obstruct it. The form of discrimination indulged in by respondent is at least equally conducive to the burdening of commerce as are other proscribed labor practices, and its undoing is necessary to alleviate the danger (see petitioner's main brief, pp. 45–48). This very record shows how a union will rally support to a boycott and continue the resultant interference with com-

[9]As respondent points out, Phelps, alone of the five men ordered reinstated, was not a leader of the union. Since all of the operators who returned to work were union members, there might be some force, were Phelps an operator, to a contention that union membership was not the cause of the refusal to reinstate Phelps. But Phelps was not an operator. He was the manager of the Stock Exchange Branch and Rodman testified clearly and unequivocally that he did not favor an employee in such a position joining the union (R. 1050–1051). Phelps was replaced by a non-union employee who had been brought from New York as an operator during the strike, and who was made manager of the Stock Exchange Branch in preference to Phelps after the strike when Phelps was seeking reinstatement (petitioner's main brief, pp. 63–65). This discrimination against Phelps was a definite deterrent to membership in the union.

merce until those discriminated against because of their union activities are restored to employment (R. 45, 1133–1135).

IV

RESPONDENT IS NOT ENTITLED TO AN INDEPENDENT JUDGMENT BY THE COURTS ON THE QUESTIONS OF FACT PRESENTED

Respondent urges that it is entitled to the independent judgment of the courts on all questions of fact because proceedings before the Board are in the nature of private controversies. The premise is unsound, since proceedings before the Board are for the protection of the public. But even were the proceedings private in nature, as respondent asserts, we fail to see why Article III of the Constitution limits the power of Congress to establish administrative tribunals for the determination of one kind of controversy more than the other. Acceptance of any such argument would either render the National Labor Relations Act unconstitutional or change the Board into an agency, similar to a master or referee, for the taking of testimony to be submitted to the courts, contrary to the express terms of the Act (respondent's brief, p. 54).

Respondent also asserts, citing *Crowell* v. *Benson,* 285 U. S. 22, that the courts must at least exercise their independent judgment on questions of fact which are "jurisdictional" under the Constitution or the Act, and urges that the question of whether the men here involved were employees

because they ceased work in connection with a labor dispute is "jurisdictional." As appears from Point II of the Board's main brief, we do not believe it essential to the enforcement of the Board's order that the men be employees within the meaning of the Act. But assuming the contrary, a finding of fact that the men discriminated against were employees is no more a prerequisite to action by the Board than findings as to any of the other ingredients of the unfair labor practices charged. There is no more reason to hold the former "jurisdictional" than the latter.

This Court rejected a similar argument in *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board,* 301 U. S. 142, 147. It was there contended [10] that since Conress could only, under the Fifth Amendment, prohibit discharges because of union activity, the question of whether a particular discharge had been made because of union activity was a constitutional fact which the courts must determine for themselves. In answer to this argument this Court said:

> This is not a case of alleged confiscation, nor is it one where the Board lacked jurisdiction, for admittedly the petitioner's activities are in interstate commerce. The complaint is merely of error in appreciating and weighing evidence. In the case of statutory provisions like § 10 (e), applicable to other administrative tribunals, we have refused to review the evidence or weigh the

[10] See petitioner's brief, No. 469, October Term 1936, p. 16.

> testimony and have declared we will reverse or modify the findings only if clearly improper or not supported by substantial evidence. The contentions respecting the rejection of evidence are not well founded.

See also *Myers* v. *Bethlehem Shipbuilding Corporation,* 58 S. Ct. 459.

V

THE MEANING OF THE BOARD'S ORDER

Respondent interprets paragraph 2 (b) of the Board's order (R. 48) as requiring it to pay back wages for the period elapsing between the date of the illegal discrimination and the time when reinstatement is offered pursuant to the order, without deduction of sums earned at other employment after the close of the hearings. It then contends that this paragraph, thus construed, is so arbitrary and capricious that the court below was warranted in denying enforcement to the entire order.

The order does not stand respondent's construction. The provision that respondent "make whole" the men clearly confines the sum that respondent is required to pay to what is necessary to do just that. Deduction of additional amounts earned after the hearing but prior to reinstatement is thus authorized. The order could have explicitly provided for such deduction, but since that is its intended and only permissible meaning, its lack of explicitness hardly evinces arbitrariness or caprice.

Respondent further claims (brief, p. 78) that the order requires it to refrain from discharging members of A. R. T. A. for any reason, placing no limitation "upon such a drastic mandate." Respondent misreads the order. Paragraph 1 (a) of the order directs respondent to cease and desist "from discharging or threatening to discharge any of its employees *for the reason that such employees have joined or assisted [the Union] or otherwise enaged in union activity*" (R. 47). Paragraph 2 (c) of the order (R. 48), requiring respondent to post notices stating that it would comply with this cease and desist provision, is necessarily limited in scope by the latter and cannot be read as respondent has read it.

Respectfully submitted.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1937
No. 706.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

MACKAY RADIO & TELEGRAPH COMPANY,

Respondent.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI.

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IN THE

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October Term, 1937
No. 706.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

MACKAY RADIO & TELEGRAPH COMPANY,

Respondent.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI.

STATEMENT.

The judgment of the court below was rendered and entered January 11, 1937. [R. 104.]

That judgment, to-wit: "The petition * * * of the * * * Board * * * is denied," was final and self-executing, leaving nothing further to be done.

Assuming that the court was empowered under the controlling statute to entertain a petition for rehearing thereafter, no such petition was filed or presented within the thirty-day period limited by its Rules of Court.[1]

1. There was filed within said thirty-day period a petition for leave to adduce additional evidence and for a rehearing in the event such additional evidence should be adduced and new findings or a modified order made by the Board upon the basis thereof. [R. 105-107.] This, obviously, was not a petition for rehearing, and it was not granted by the court below.

A motion for leave to file a proposed "supplement" to said petition was filed May 10, 1937 (more than three months after the judgment had become final.) [R. 108.] This motion was not granted.

An order *purporting* to grant a petition for rehearing was entered May 17, 1937. [R. 112.]

A *purported* judgment that the Petition of the Board be denied was rendered and entered October 19, 1937. [R. 124.]

The petition for certiorari was filed January 15, 1938.

RESPONDENT'S CONTENTIONS.

Respondent's contentions in opposition to the petition for certiorari may be outlined as follows:

1. That the order of the court below, purporting to grant a rehearing, was void for lack of jurisdiction; that the judgment entered January 11, 1937, was the final judgment herein; that the petition for certiorari, filed more than eleven months thereafter, is too late and should be denied for lack of jurisdiction.

2. That the judgment of the court below does not conflict with any other decision, for the reason that nothing was decided *by the court*, except that the Board's petition for enforcement should be denied.

3. That there is no error in the judgment of the court below.

4. That this cause is not a suitable one for review by this Court, because of the grave deficiencies in the record, as to the pleadings, the findings and the evidence.

I.

This Court Has No Jurisdiction to Grant a Writ of Certiorari as Requested in the Petition Herein.

The jurisdiction of this Court to review decisions of Circuit Courts of Appeals is defined by Sections 347 and 350 of Title 28 of the U. S. Code. Section 350 provides that no writ of certiorari "to bring any judgment or decree before the Supreme Court for review shall be allowed or entered unless application therefor be duly made within three months after the entry of such judgment or decree. . . ." This limitation is jurisdictional. *Toledo Scale Co. v. Computing Scale Co.,* 261 U. S. 399, 418.

The original judgment of the court below denying the petition of the National Labor Relations Board for enforcement of its order herein was filed and entered January 11, 1937. However, petitioner does not seek a review of this judgment, but of a "judgment" entered, after a so-called rehearing, on October 19, 1937. [R. 124, P. 2.] Unless the judgment of October 19, 1937, was entered within the proper exercise of the jurisdiction of the said Circuit Court of Appeals it is a nullity, with the result that the judgment of January 11, 1937, was the final judgment herein. It follows that this petition for certiorari was filed more than nine months too late. It is the contention of this respondent that the "rehearing" in the court below was held after the jurisdiction of that court had been exhausted both under its own rules and under the provisions of the National Labor Relations Act. In accordance with this contention respondent duly caused its exceptions to be noted to the order entered herein by the lower court on May 17, 1937, granting the petition for rehearing. [R. 112.]

A. THE CIRCUIT COURT OF APPEALS WAS WITHOUT JURISDICTION UNDER THE NATIONAL LABOR RELATIONS ACT TO GRANT A REHEARING, THEREFORE, THE JUDGMENT OF JANUARY 11, 1937, WAS THE FINAL JUDGMENT OF THE COURT BELOW, AND THIS PETITION FOR CERTIORARI WAS FILED TOO LATE.

The jurisdiction of the Circuit Court of Appeals to review decisions and orders of the National Labor Relations Board is conferred by Section 10(e) of the National Labor Relations Act. In proceeding under this section the Circuit Court of Appeals was not exercising its general jurisdiction as an appellate court but was functioning as a special statutory court; not as a court of appeal but as a court of the first instance. It is, in fact, a newly created tribunal of limited jurisdiction which never existed prior to the enactment of the National Labor Relations Act. As such, it possesses such powers, duties and jurisdiction as are conferred upon it by that Act and no more.

The Court's powers under the Act are stated in Section 10(e) thereof, as follows:

> "* * * to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board."

In addition to the foregoing, the Court, upon a proper and seasonable application for leave to adduce additional evidence

> "* * * may order such additional evidence to be taken before the Board * * *."

The foregoing comprise all of the powers expressly granted to the court in this Act, and under the rule, *expressio unius exclusio alterius,* no additional powers can be implied.

These provisions of the National Labor Relations Act were copied, substantially verbatim, from the corresponding provisions of the Federal Trade Commission Act, 15 U. S. C. 45. Prior to their adoption in the instant Act it had been held that a circuit court of appeals when functioning thereunder possesses no general jurisdiction or "inherent" or implied powers. In *Federal Trade Comm. v. Balme, supra,* 23 F. (2d) at 618, the court said:

> "The Federal Trade Commission Act confers special statutory jurisdiction, and the extent of such jurisdiction and the conditions of its exercise over subjects or persons must necessarily depend upon the terms in which the jurisdiction is thus conferred. It does not depend upon the rank of the court upon which it is conferred. It must be strictly pursued because the court does possess jurisdiction over other subjects or persons more extended and general."

In *Chamber of Commerce v. Federal Trade Comm., supra,* 280 F. at 47, the court said:

> "This act creates powers not otherwise conferred upon Circuit Courts of Appeals, and such courts are limited strictly to the powers thus specified."

It is a settled rule of statutory construction that when a statute which has been judicially construed is reenacted in the same or substantially the same terms, the Congress is presumed to be familiar with that construction and to have adopted it as part of the law, unless a different construction is expressly required. *Dollar Sav. Bank v. United States,* 19 Wall. 227, 237; *Camp v. Gress,* 250 U. S. 308, 315, 316; *Heald v. Dist. of Columbia,* 254 U. S. 20, 22, 23.

The application of this rule to the instant problem constrains the conclusion that Congress, in enacting the National Labor Relations Act in the light of the construction theretofore placed by the courts upon the Federal Trade Commission Act, intended to grant to the courts the several powers enumerated therein and none other. It follows that when the court herein had rendered its self-executing judgment denying the Board's petition, and had caused the same to be entered without reservation, it had no power thereafter to entertain or to grant a petition for rehearing. It is of course conceded that if the court had entered a decree for the enforcement of the Board's order by injunction, it would have retained jurisdiction so long as such injunction remained in force. But that is not this case.

Not only does this Act omit (*ex industria* as we think) to confer power upon the court to grant a rehearing, but the clear implication of its provisions is that the court shall not possess that power. It provides, Section 10(e), that the

> "* * * judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States * * * as provided in sections 239 and 240 of the Judicial Code as amended (U. S. C., Title 28, secs. 346 and 347)."

This is tantamount to declaring that there shall be no review of the judgment except by the Supreme Court. This means that there shall be no rehearing by the court below, because a rehearing is a review of the case upon the same record by the same court. *United States v. A. Bentley & Sons Co.*, 293 F. 229, 237.

Another circumstance which tends to confirm the conclusion that a rehearing after final judgment is not authorized under this Act is the provision in Section 10(i) thereof, that

> "Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed."

Petitions for rehearing are always dilatory in effect, regardless of their intent. The proceedings incident to the purported rehearing herein caused a delay of more than nine months from the entry of the final judgment to the re-entry of the same judgment.

It is submitted that the judgment entered January 11, 1937, was and is the final judgment herein and that all proceedings of the Circuit Court of Appeals, subsequent thereto, were *coram non judice* and of no effect.

B. THE COURT BELOW WAS WITHOUT JURISDICTION UNDER ITS OWN RULES TO GRANT A REHEARING IN THIS PROCEEDING.

The same result is reached even if it be assumed (though not conceded) that the court, while functioning as a special *nisi prius* court pursuant to this Act, possesses all of the powers which inhere in it as a court of general jurisdiction when functioning as an appellate court. This is because of the fact that no petition for rehearing was presented to it within the thirty-day period limited by its Rules of Court,[2] which in this connection have the force of law. *Morse v. United States,* 270 U. S. 151. Thus, even upon the assumption of general jurisdiction and "inherent powers," the court's jurisdiction of this proceeding terminated February 11, 1937, and it had no power thereafter to recall or reconsider its judgment.

There was filed on February 9, 1937, within said thirty-day period, a document entitled "Petition of National Labor Relations Board for Leave to Adduce Additional Evidence and for Rehearing; and Notice of Motion." [R. 105-107.] An examination thereof discloses indubitably that *this was not a petition for rehearing.* It was a petition for leave to adduce additional evidence (which petition was not granted), and for a reconsideration of the

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2. Rule 29 of the court below provides: "A petition for rehearing may be presented within 30 days after judgment."

case *only in the event* that such additional evidence should be adduced. The prayer, in this behalf, was for "* * * a rehearing in this cause *in the event* the Board, * * * makes new findings, or makes recommendations for the modification of its order, by reason or upon the basis of the additional evidence so adduced." (Italics supplied.) This was not a petition for rehearing, either in form or in substance. "A rehearing is simply a new hearing and a new consideration of the case on the same record." *United States v. A. Bentley & Sons Co.*, 293 F. 229, 237. A petition, though entitled "petition for rehearing," which is not this, in substance, does not operate to toll the time for taking an appeal. *Zimmern v. United States,* 80 F. (2d) 993, 994. The order purporting to grant a rehearing was made May 10, 1937, more than three months after the final judgment. Assuming, but not conceding, the power of the court to grant a rehearing upon its own motion, we submit that it could not do this, in any view, after the time for review upon certiorari had expired.

If either of the foregoing contentions is sound, it follows that the judgment entered January 11, 1937, was and is the final judgment in said proceeding; that the proceedings thereafter taken therein, including the purported decision of October 19, 1937 (which did not purport to change in any respect the judgment of January 11, 1937), were *coram non judice* and an utter nullity; with the result that this petition for certiorari, which was filed more than ten months after the entry of the final judgment, is too late and should be denied for want of jurisdiction.

II.

The Decision of the Court Below Is Not in Conflict With Any Other Decision Either of This Court or of Any Circuit Court of Appeals.

A. Since Each Judge Rendered a Separate Opinion, the Decision of the Court Established Only the Rights of the Parties Without Creating Any Precedent.

The principal ground alleged for granting certiorari herein is the assertion that the decision below conflicts with other decisions in the Fourth and Fifth Circuits and with a later decision in the Ninth Circuit. It is the position of the respondent that there is not and cannot be any such conflict, because of the fact that *the court* below did not decide any point of law. Nothing was decided below *by the court* except that the Board's petition should be denied. As pointed out by petitioner (Petn. 7-9), each of the three judges filed a separate opinion and neither of them concurred in anything said by either of the others. The only conclusion concurred in by a majority of the court was that the Board's petition should be denied.[3]

It is settled law that, in a court composed of several judges, an opinion not concurred in by a majority thereof is not the opinion of the court; does not determine any

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3. It is respondent's contention that the decision of January 11, 1937, was the final judgment and that the subsequent proceedings were void for lack of jurisdiction. What is here said, however, applies with equal force to the decision and judgment of January 11, 1937, and to the purported decision and judgment of October 19, 1937. The two "decisions" are identical and no change was made in the respective opinions that is material in this connection.

question of law; creates no precedent; and has no standing in the law of *stare decisis*. *Luco v. De Toro,* 88 Cal. 26, 28; *State v. Daues,* 323 Mo. 388; 19 S. W. (2d) 700, 707; *Whiting v. Town of West Point,* 88 Va. 905, 910. In the application of this principle, a judgment which is affirmed upon appeal by an equally divided court concludes the parties but cannot settle any principle of law. *Etting v. The Bank of the United States,* 11 Wheat. 59, 78; *Durant v. The Essex Co.,* 7 Wall. 107, 113; *Hertz v. Woodman,* 218 U. S. 205, 214; *Williams v. N. Y. P. & N. R. Co,* 11 F. (2d) 363, 366. The court below has since expressly recognized and declared, in effect, that its decision in the instant case created no precedent.[4] Manifestly, if it created no precedent, it could not create a conflict.

B. The Decisions in the Jeffery,[5] Bell[6] and Carlisle[7] Cases Are Not Contrary to the Judgment of the Court Below That Enforcement of the Order Be Denied or to the Opinions of the Judges Rendering It.

None of these three decisions is in conflict with the judgment that under the specific pleadings, evidence and findings involved in the case at bar, the Board was not entitled to an order of enforcement. None is in conflict with Judge Mathews' view that there was no allegation in

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4. In the *Carlisle Lumber Co.* case, see Petn. 13.

5. *Jeffery-De Witt Insulator Co. v. N. L. R. B.,* 91 F. (2d) 134.

6. *N. L. R. B. v. Bell Oil & Gas Co.,* 91 F. (2d) 509.

7. *N. L. R. B. v. Carlisle Lumber Co.* (P. 13.)

the amended complaint, no evidence and no finding that the men named in the complaint were employees, as that word is defined in the Act. None of the three decisions above referred to considered the meaning of the words "reinstatement of employees"[8] in the light of the Fifth Amendment and therefore they could not be either contrary to or in accord with Judge Wilbur's opinion.

Each is distinguishable from the case at bar for numerous reasons. In the *Jeffery* case, the Board made findings of all of the necessary jurisdictional facts which it failed to find herein. It found that the employer was engaged in a business affecting interstate commerce and that the men involved were employees, as defined in the Act, in that they had ceased work because of a dispute which had arisen over their insistance upon and the employer's refusal to accede to a contract with respect to seniority, union shop and check-off.[9] The case at bar is distinguishable because here the Board failed to find that the men were employees, as defined by the Act, and failed to find facts from which such fact could be inferred.[10] Another difference is that in the *Jeffery* case, the unfair labor practice in question was not the refusal to hire strikers; it was the refusal of

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8. National Labor Relations Act, Sec. 10(c).

9. Decisions and Orders of National Labor Relations Board, Vol. 1, page 618, at page 623.

10. For a full discussion of this deficiency in the findings see Point III-A, at pages 19 to 22.

the employer to negotiate with the union during the strike, and *before* the men sought re-employment. The meaning of the words "reinstatement of employees" and the effect of the Fifth Amendment were not argued in the briefs nor ruled upon. In fact the court, after stating the several points urged by the employer (none of which is involved here) stated:

> "Other contentions going to the constitutionality of the Act have been virtually abandoned * * *."

In *KVOS v. Associated Press,* 299 U. S. 269, 279, this court quoted from *Webster v. Fall,* 266 U. S. 507, as follows:

> "Questions which may lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents."

Under these circumstances, the *Jeffery* case does not determine anything contrary to the judgment of the court below or to the reasoning of either of the two judges who concurred in that judgment.

In the *Bell* case, the Board found the jurisdictional fact which it failed to find in the case at bar. It found that the man against whom the Bell Company had discriminated was an employee, as defined in the Act. Its finding was:

> "The strike, called because of the failure of the respondents and Local No. 258 to reach an agreement

> concerning wages and working conditions, was a controversy concerning terms, tenure and conditions of employment. Berbermeyer ceased work as a consequence of, and in connection with, this current labor dispute."[11]

The decision of the Court, which is reported at 91 F. (2d) 509, did not consider the validity of the Board's order in the light of the Fifth Amendment; indeed, the portions of the order requiring affirmative action which might have constituted a basis for considering the effect of the Fifth Amendment were remanded to the Board for further consideration. According to petitioner (P. 11), the Board made an amended order which the Court enforced without opinion, apparently without considering any constitutional problems. Under such circumstances, it cannot be said that the Bell decision conflicts with the judgment in the case at bar or with the views expressed by the judges who rendered the judgment.

In the *Carlisle* case, the complaint was not based upon the refusal of the employer to re-employ strikers, but upon its refusal to bargain collectively with men who had gone on strike and had been formally discharged prior to July 5, 1935, when the National Labor Relations Act became effective. The Board again found the jurisdictional facts which it failed to find in the case at bar. That is, it found that the men were employees as that term is defined in

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11. Decisions and Orders of the National Labor Relations Board, Vol. 2, p. 577, at p. 582.

the Act.[12] This circumstance alone would justify a different conclusion in the case at bar than was reached in the *Carlisle* case. Therefore, the judgment of the court below cannot be in conflict with the *Carlisle* decision.

The principal question in the *Carlisle* case was whether the provisions of the Act were retroactive so that a person who had been discharged prior to July 5, 1935, could still be regarded as an employee. The effect of the definition of "employee" was discussed at length. It is not clear that the specific objection that the order of the Board was void under the Fifth Amendment was presented to the court and judges rendering the decision of the court did not discuss the Board's order in the light of such an objection.

Certainly the decisions in these three cases are not in conflict with the judgment of the court below. In the light of *KVOS v. Associated Press* (*supra*), it is submitted that they are not even in conflict with any opinion rendered in the case below.

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12. Decisions and Orders of the National Labor Relations Board, Vol. 2, p. 248:

> "The union, unable to come to an agreement with the respondent through the ordinary and practical channels of collective bargaining, because of the respondent's stubborn determination not to deal with it in a sincere effort to reach an agreement, resorted to strike, hoping that by the use of this economic weapon the respondent would be forced to bargain collectively with it." (pp. 258-259.)
>
> "That the strike, which began May 3, 1935, and which is still in progress, was a current labor dispute at the time of the aforementioned refusals to bargain collectively cannot be questioned." (p. 262.)
>
> "Thus it is clear that the 263 members of the union went on strike on May 3, 1935, and thereafter were still employees of the respondent *at the time of* the aforementioned refusals to bargain collectively." (Page 262. Italics supplied.)

C. THE JUDGMENT OF THE COURT BELOW IS NOT ERRONEOUS IN THE LIGHT OF THE JONES & LAUGHLIN CASE.

Petitioner further contends that the decision below is erroneous "in the light of the decision of this Court" in the *Jones & Laughlin* case, 301 U. S. 1, 47. Apart from the fact that the decision below determines no point of law which can be extracted therefrom and found to be erroneous, the facts of the two cases are so materially different that there is no just basis for a comparison. The men who were ordered reinstated in the *Jones & Laughlin* case had been *wrongfully discharged* by an "unfair labor practice," in violation of valid provisions of the Act. They were conceded to be employees at the time of the "unfair labor practice." The men ordered reinstated in the instant case *had quit of their own volition before any unfair labor practice had occurred.* They were not employees because there is neither allegation nor evidence nor finding herein that these men had quit work in connection with any current labor dispute, so as to constitute them "employees" within the purview of the statutory provision for the reinstatement of employees. The complaint, in failing to allege that these men were employees whose work had ceased in connection with a current labor dispute, failed to state a cause of action for an order of reinstatement, under the terms of the Act. There is no finding that they were employees, to support the jurisdiction of the Board and no competent substantial evidence of the fact. Nothing said in the *Jones & McLaughlin* case is in conflict with the judgment rendered by the court below upon the record before it.

III.

The Judgment of the Court Below Was Not Erroneous in the Light of the Statute.

As pointed out by petitioner and as set forth under Point II-A of this answer, neither of the judges of the court below concurred in the opinion of either of the others and none of the opinions sets any precedent for any future action by the Board or by any court. The only action taken by a majority of the judges, and therefore by the court, was the rendering of a judgment denying enforcement of the Board's order. The two judges who rendered the judgment of the court rendered separate opinions. If there were erroneous statements in either of these opinions (which we do not concede), such statements cannot be considered error of the *court*. The *court* did not write any opinion; it rendered only a judgment denying enforcement of the Board's order. To determine whether, as petitioner alleges, the judgment of the court in denying enforcement was erroneous, it is necessary to examine not the opinions but the pleadings, the evidence and the findings of the Board and the other documents set forth in the record. It is submitted that the court rightly decided that the enforcement of the Board's order against respondent was not justified in the record.

A. The National Labor Relations Board Had No Jurisdiction Under the Act to Enter Its Order.

The Board sought to exercise its power to order "reinstatement of employees." (Sec. 10(c).) The Act defines employees to include those "whose work has ceased as a consequence of, or in connection with, any current labor dispute * * *." (Sec. 2(3).) The term "labor dispute" is defined as "any *controversy* concerning terms,

tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment * * *." (Sec. 2(9).) Both "dispute" and "controversy" mean a "contest by opposing argument or expression of opposing views or claims; a debate."[13]

The Board did not find that there was any such argument or expression of opposing views or claims at any time prior to the strike which occurred at midnight, October 4, 1935. The Board found that in June, 1935, the point to point operators of ARTA (the men here involved) prepared a general agreement concerning wages and working conditions,[14] and presented same to respondent, but agreed to postpone consideration thereof until later; that they again presented the agreement in September and agreed to respondent's request for time to study same; that they then informed respondent that they were "considering" joint action with the marine operators (not involved here) who "had also presented the Mackay companies with a system agreement."[15]

Up to this point (September 13), clearly there was no dispute or controversy. The Board found that, some time prior to September, 1935, the local point to point operators had sent Salisbury to New York, as their representative,

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13. Webster's New International Dictionary.

14. This proposed agreement was not produced at the hearing and there was no competent evidence of its contents or provisions.

15. There was no evidence as to the subject or contents of said "system agreements."

to assist the national officers of ARTA in their negotiations "since they were not too familiar with point to point conditions," and (by inference) that he remained there continuously until the strike occurred. [R. 20, 21.] "On October 4 the ARTA negotiators in New York decided that a strike was advisable in view of the unsatisfactory state of the negotiations. Salisbury telephoned the local * * *" [R. 21]; and the strike of the point to point operators in San Francisco then occurred simultaneously with the strike of the marine operators in New York. Thus it is clear that, if there was in fact *any* dispute or controversy, it *must* have taken place in New York, between September 13 and October 4. But there is no finding as to what occurred in New York. The Board's statement that "* * * the ARTA negotiators in New York decided that a strike was advisable in view of the unsatisfactory state of the negotiations," is not a finding that the negotiations had in fact reached an unsatisfactory state. It is not even a finding that there actually were any negotiations in New York. At the utmost, it is merely a finding as to what certain unnamed persons in New York believed or concluded.

The Board found that the local point to point operators struck that evening. There is no finding and no evidence as to who called the strike, or when it was called, or why it was called. There is no finding that it was, in fact, "called" by anyone. The finding is simply that the men "went on strike" that evening. [R. 21.] The inescapable inference from the Board's findings is that the local oper-

ators, upon learning that the operators in New York had voted to strike that evening, decided to go out at the same time so as to give them "moral support." In short, the strike in San Francisco was a sympathetic strike in aid of the strikers in New York. It is submitted that a sympathetic strike is not a "labor dispute," in so far as the "sympathy strikers" are concerned. See *Donnelly Garment Co. v. International Ladies Garment Workers Union* (D. C., Mo., Dec. 31, 193).[16]

An analogous situation was presented to the Supreme Court in the case of *Baltimore and Ohio Railroad Company v. United States,* 293 U. S. 454, where a number of carriers sought to enjoin the enforcement of a rule, promulgated by the Interstate Commerce Commission under the Boiler Inspection Act, requiring the installation of certain safety devices on steam locomotives. Under that statute the Commission was empowered to prescribe such rules for the purpose of removing "unnecessary peril to life or limb." This Court held that the failure of the Commission to find that its rule was required to remove "unnecessary peril to life or limb" was a jurisdictional defect which rendered its order void. Similarly, since the National Labor Relations Act limits the power of the Board to reinstatement of *employees,* the absence of any finding from which the Court can conclude that the five men were employees within the meaning of the Act was a failure to find a basic jurisdictional requirement.

16. Reported in Prentice-Hall Labor Service, Sec. 18,211 and 18,230.

B. THE BOARD'S ORDER WAS IMPROVIDENTLY MADE AND ENFORCEMENT WAS PROPERLY DENIED BECAUSE THE AMENDED COMPLAINT FAILED TO ALLEGE A JURISDICTIONAL REQUIREMENT, TO-WIT, THAT THE MEN NAMED IN THE COMPLAINT WERE EMPLOYEES AS DEFINED IN THE ACT.

Section 10(b) of the Act provides for the issuance and service of a complaint "stating the charges" in respect of any unfair labor practice. It further provides that the complaint may be amended at any time prior to the issuance of an order based thereon. The Board filed its complaint and Mackay answered. During the hearing, the Board filed an amended complaint and it was stipulated that, except as to matters admitted in the answer theretofore filed by Mackay, the allegations of the amended complaint should be deemed to be denied. [R. 900-901.][17]

The vital question which petitioner seeks to have reviewed is whether Mackay can be compelled, against its will, to employ men who the Board *now* alleges (after failing so to allege in its complaint or to find in its decision) had ceased work in connection with a current labor dispute. The jurisdiction of the Board is dependent upon the existence of the status of employer and employee. Here, where the workers voluntarily ceased work and refused to render services, they could be employees, as defined by the Act, *only if* they did so "in connection with a current labor dispute."

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17. The petition herein refers only to the original complaint (Petn. 4), and contains no mention of the fact that this was displaced and superseded by an amended complaint which was filed thereafter "to conform to the proof." [R. 7-9; 17, note 1.] The effect of this was to abandon and completely eliminate the original complaint as a pleading. 49 C. J. 558, and cases cited.

The amended complaint does not allege that the five men were employees at the time Mackay refused to offer them employment and thus, so it is argued by petitioner, committed an unfair labor practice. Neither does said amended complaint allege that the men had ceased work in connection with a labor dispute. On the contrary, it alleges that Mackay refused to *re-employ* the men. [R. 8.] There is no inference, in said complaint, that the men were employees at that time. The inference is to the contrary, because men who are already employed cannot be re-employed. If they were not employees the Board had no jurisdiction to make any order in respect of their future employment.

Failing to allege that the men were employees, either as defined in the Act or otherwise, the complaint fails to state a cause of action under the Act. *Federal Trade Comm. v. Gratz*, 253 U. S. 421, 427. This Court there said:

> "Such an order should follow the complaint; otherwise it is improvident and, when challenged, will be annulled by the court."

For this reason alone, the court below properly denied enforcement of the Board's order.

C. The Evidence Does Not Support the Board's Order Because It Fails to Show That the Men Named in the Amended Complaint Were Employees as Defined in the Act.

It is submitted that the evidence is equally insufficient to establish that the men named in the complaint were employees and therefore, that the Board had jurisdiction in this cause. While it is perhaps adventurous to make a categorical statement concerning a mass of evidence which covers more than a thousand closely printed pages [R.

125-1140], it is confidently believed to be the fact that there is no *competent* evidence in the record which even tends to prove the existence of a current labor dispute at the time the strike took place. Certainly, the petitionerer has not referred to any such evidence. He has not even claimed that there is any such evidence.

The record includes a vast deal of incompetent evidence —hearsay, hearsay "twice removed," opinions of lay witnesses, statements of conclusions, etc. Respondent does not contend that the admission of incompetent evidence in a proceeding under this Act constitutes reversible error. Respondent does contend, however, that where, as here, proof of a given fact is an indispensable predicate to the jurisdiction of the Board to make the order, there must be *some* substantial *competent* evidence which tends to prove that fact. *Arkansas Wholesale Grocers Assn. v. Federal Trade Comm.,* 18 F. (2d) 866, 871; *Hills Bros. v. Federal Trade Comm.,* 9 F. (2d) 481, 484; *Federal Trade Comm. v. A. McLean & Son,* 84 F. (2d) 910, 911; *Federal Trade Comm. v. Curtis Co.,* 260 U. S. 568, 580; *International Shoe Co. v. Federal Trade Comm.,* 280 U. S. 291, 297.

It is apparent from the testimony, as well as from the findings, that *there was no current labor dispute up to the time of the strike,* unless such a dispute occurred in New York. There is no competent testimony as to *anything* which occurred in New York during this period (from September 13 to October 4). If there was *any* testimony upon this subject it necessarily was hearsay, because no witness testified thereto who was in New York at that time. This is most highly significant in the light of the fact that the one witness who could have given competent

testimony upon this subject, of his own knowledge, did not do so, although he was present at the hearing before the Board. Salisbury, who was in New York, as the representative of the local union, for the purpose of aiding in the negotiations of the national officers, gave no testimony upon this subject, notwithstanding the fact that he was present at the hearing and was sworn as a witness. [R. 971, 972.] The inevitable inference is that no dispute or controversy occurred, as between the respondent and the local union up to the time of the strike.

Under petitioner's construction of the Act the Board is empowered thereby to order the reinstatement of the men when, and only when, they are "employees whose work has ceased in connection with a current labor dispute." This fact is the jurisdictional predicate for the Board's order. The existence of this jurisdictional fact is neither alleged nor proved nor found in this case. It is submitted therefore that the court below did not err in denying enforcement of the Board's order.

D. The Decision of the Court Below Was Not Erroneous in Denying Enforcement of the Board's Order In Toto.

The petitioner alleges that even if Judge Wilbur's opinion be sound (and we submit that it is sound), there is no basis for denying *in toto* the Board's application for enforcement of its order and that the judgment was clearly erroneous. (P. 20.) A reading of the Board's decision, however, discloses that the entire order of the Board is predicated on the assumption that the five men were employees as defined in the Act. Since the Board made no finding to this effect by inference or otherwise, there was no basis for granting enforcement to any part of the order.

IV.

The Record Is Inadequate to Present to This Court Any Question of General Importance.

Petitioner's allegation that this case raises a question of general importance is predicated upon the assumption that the record is adequate to establish that the men named in the amended complaint were employees. Their status as employees depends on whether they ceased work in connection with a current labor dispute. Petitioner continually states that the men struck because of a "failure of negotiations" concerning wages and conditions of employment. (Pp. 2, 9, 11, 19.) There is a complete absence of allegation in the amended complaint, evidence in the record and findings by the Board to support petitioner's statement.[18]

This case presents not primarily a question of law of general importance but primarily a question of whether the pleadings, evidence and findings are sufficient to provide any factual foundation for the Board's order, as distinguished from any question of law of importance. Where the primary question is one of fact, certiorari will be denied. In *Southern Power Co. v. North Carolina Public Service Co.*, 263 U. S. 508, this court ordered the writ dismissed, stating:

> "The argument developed that the controverted question was whether the evidence sufficed to establish actual dedication of petitioner's property to public use,—primarily a question of fact."

We submit that no question of public importance should be decided upon a record so deficient in the fundamental requirements of pleading, evidence and findings necessary to present the important question.

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18. See Point III of this Answer for full discussion in support of this assertion.

V.

Conclusion.

It is respectfully submitted that the petition should be denied because:

(1) The court has no jurisdiction to grant a writ of certiorari as requested in the petition, the petition not having been filed within the time allowed by statute.

(2) The decision of the court below is not in conflict with any decision of this Court or of a Circuit Court of Appeals. No opinion was concurred in by two judges and it is not the opinions but the order denying enforcement of the Board's order which constitutes the judgment of the court below. That judgment is not in conflict with any other decision.

(3) The judgment of the court below was not erroneous in the light of the statute. No other judgment could have been entered for the reason that the Board did not allege or find and the evidence did not establish that the men named in the amended complaint were employees as defined in the Act.

(4) The record is inadequate to present to this Court any question of general importance.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 706.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

MACKAY RADIO & TELEGRAPH COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1937

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

MACKAY RADIO & TELEGRAPH COMPANY

No. 706

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT.

Statement of Facts.

On November 9, 1935, the Board issued its complaint charging that respondent was engaged in interstate commerce and that on October 5, 1935, it had discharged and refused to re-employ five employees because they had joined and assisted a labor organization known as American Radio Telegraphists Association (hereinafter referred to as A.R.T.A.) and had engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection (R. 3). Respondent answered, admitting it was engaged in interstate commerce, denying the other charges and alleging affirmatively that the five employees had not been discharged but had, on or about October 5, 1935, voluntarily left respondent's employment (R. 6).

On December 2, 1935, a hearing upon the charges was commenced before a Trial Examiner. The hearing was had from day to day. On December 16, 1935, the Board rested its case and asked and was granted leave to amend its complaint to conform to the proof (R. 859, 900). By its amendment the Board substituted for the allegation that respondent had *discharged* the five employees on October 5, 1935, the allegation that between October 7 and 10, 1935, respondent had refused to *re-employ* the five men (R. 7-9). The Board refers to this as changing the complaint in several "minor particulars" (P. Br. 5-6). Actually, it changed the case from a charge of wrongful discharge of persons employed to a case of wrongful refusal to re-employ persons *formerly* employed. It was stipulated that the allegations of the amended complaint be deemed denied (R. 900-901). Respondent's motion to dismiss, made at the conclusion of the Board's case, was denied (R. 857-860).

Respondent then introduced evidence pursuant to the issues tendered by the amended complaint. Without permitting the Trial Examiner, who saw the witnesses and heard the testimony, to make an Intermediate Report, the Board transferred the case to be continued before it in Washington, and heard oral argument (R. 18).

On February 20, 1936, the Board filed its Decision. It found that A.R.T.A. was divided into two divisions, one composed of the marine radio operators (who are employed by shipowners from lists of operators recommended by the radio companies) and one composed of land or point-to-point operators; that in June, 1935, A.R.T.A. presented to respondent in New York a proposed general agreement concerning wages and working conditions for the entire Mackay land or point-to-point system; that at the request of respondent's officials, A.R.T.A. consented to a postponement of consideration of the agreement because of contemplated bankruptcy proceedings that might affect the Mackay companies; that in September, 1935, the proposed agreement was again presented to respondent;

that respondent gave a leave of absence to one of its San Francisco employees, O. M. Salisbury, so that he might go to New York to assist A.R.T.A. in its negotiations in respect of this contract; that the A.R.T.A. marine operators who were, from time to time, employed by shipowners, also had presented to respondent a proposed system agreement the nature of which is not disclosed by the findings (R. 19-20). The Board did not make any finding as to the date of its presentation. Neither of said proposed agreements was offered in evidence at the hearing.

The Board further found that on September 13, 1935, Ellery Stone, vice president in charge of operations for respondent (R. 19), was in San Francisco; that A.R.T.A. members of the HB (San Francisco) office advised him that A. R. T.A. was considering joint action on the marine and point-to-point agreements; that Mr. Stone requested time to return to New York and study the point-to-point agreement; that this request was granted (R. 21).

There is no finding as to when Stone reached New York. There is no finding as to when negotiations started, what they were about, whether they concerned one or both of the agreements or what happened during the course of those negotiations. There is no finding that respondent did not negotiate in good faith. There is no finding that respondent abandoned negotiations or refused to negotiate further. There is no finding that negotiations reached a deadlock or that further negotiations would not have resulted in a peaceful settlement of whatever questions were the subject of the negotiations. There is no finding that negotiations failed.

The only finding in respect of what took place in New York is as follows:

> "On October 4th the A.R.T.A. negotiators in New York decided that a strike was advisable in view of the unsatisfactory state of the negotiations" (R. 21).

At midnight all of the San Francisco force then on duty went on strike (R. 21).

Under the Board's findings this is not a case where respondent provoked or prolonged a strike by refusing to negotiate or by any other means. It is a case where respondent's employees abandoned peaceful negotiations then in progress and adopted the use of the weapon of strike with its consequent interruption to interstate commerce.

The Board found that the strike lasted only four days at San Francisco, and that there, as well as elsewhere, it was a failure. The Board further found that during the strike respondent transferred operators to San Francisco from its offices in other cities; that they were to be permitted to remain permanently in San Francisco if they desired (R. 28); that five of these men chose to remain (R. 31); that respondent "reinstated" all but five of the sixty-eight strikers; that the reason that respondent refused to "reinstate" four of these strikers was because they were the leaders of the local which had just caused it to pass through a costly strike (R. 32); that the reason respondent refused "reinstatement" to the fifth man, P. D. Phelps, was because he was a member of the Local (R. 39); that Phelps had not been active in the Local's affairs, or in the strike (R. 37).

The Board's order is predicated upon the findings above referred to and unless they support the order, the Board was not entitled to a judgment enforcing its order. Counsel have attempted to supplement and amplify the findings by referring to the testimony, all of which, with regard to the negotiations in New York, is hearsay, sometimes thrice removed. The *findings* should be examined with care, for they constitute the foundation of the Board's order.

From these findings, the Board concluded, not that respondent had refused to re-employ the five men (which was the charge in the amended complaint), but that it had discharged them, and the Board ordered, not that the five men be re-employed, but that respondent cease and desist discharging them and that they be reinstated with full pay from the date of discharge until reinstatement less the amount earned subsequent to discharge "as shown in the findings of

fact" (R. 48). No provision was made for deduction of sums earned subsequent to the date of the hearing which commenced on December 2, 1935.

On March 2, 1936 the Board petitioned the Circuit Court of Appeals for the Ninth Circuit for enforcement of the order. On April 16, 1936 the case was submitted with leave to file additional briefs. On January 11, 1937, the Court entered its judgment denying enforcement of the Board's order. On February 9, 1937, the Board filed its "Petition for Leave to Introduce Additional Evidence and for a Rehearing" wherein it prayed that the Board be given leave to introduce additional evidence and for a rehearing "*in the event*" the Board should make new findings or a different order upon the basis of the additional evidence. The Board refers to this as a petition for rehearing (P. Br., 11). The petition was submitted on April 23, 1937 with leave to file briefs. On May 10, 1937, more than three months subsequent to the entry of the judgment of the court below, the Board filed a motion for leave to file a supplement to said petition, praying for a rehearing (R. 108-111). On May 17, 1937 the so called petition for rehearing was granted (R. 112). No order was made in respect of the petition for leave to adduce additional evidence. On June 14, 1937, and over the objection of counsel for respondent, the cause was argued and submitted and on October 19, 1937 (R. 112), the court issued its order again denying enforcement of the Board's order (R. 124).

Questions Presented.

We are unable wholly to agree with the Board's conception of the questions presented (P. Br. 2). Each of the first three questions, as stated by the Board, is predicated upon the *assumed fact* that the strike was "because of failure of negotiations concerning wages and terms of employment." There is no finding that the strike was because of failure of *any* negotiations. There is no finding that there was *any failure* of negotiations. There never was any allegation, in either complaint, of *any* failure of *any* nego-

tiations; or even that there ever were *any* negotiations. There never was a *hearing* upon any of those issues.

It is submitted, therefore, that those three "questions presented" as propounded by the Board, are irrelevant to the *case* presented upon the record now before this Court.

Our conception of the questions which are presented upon the record herein may be stated as follows:

1. Whether respondent was accorded due process of law, in the light of the fact that the Board's order is predicated upon an "unfair labor practice" which was withdrawn from the issues at the hearing before the Board; a question of fact which was not merely *omitted* from the issues, but was *excluded* therefrom by affirmative actions of the Board;

2. Whether there is any finding herein that the strikers ceased work as a consequence of or in connection with any current labor dispute, as defined in the Act;

3. Whether the Act empowers the Board to compel an employer to reemploy or "reinstate" employees who have abandoned negotiations and gone on strike, prior to any unfair labor practice, where the employer, after the strike and prior to any unfair practice, has permanently employed others in place of the strikers;

4. Whether, if the Act be construed to so empower the Board, it is violative, in this respect, of the Fifth Amendment;

5. Whether respondent was entitled, under Article III of the Constitution, to the independent judgment of the court below upon the *quasi*-jurisdictional facts;

6. Whether this case is properly before this Court in view of the fact that the writ of certiorari was not applied for within three months after the entry of the first final judgment of the court below;

7. Whether the Board's order was so arbitrary and capricious, in the light of all the circumstances, as to justify the judgment below, apart from all other considerations.

I. Respondent has not been accorded due process of law in that it was convicted of an unfair labor practice with which it was not charged and which the Board affirmatively excluded from the issues.

The Board's order is predicated upon the premise that at the time respondent refused to give employment to the five men in question, those men were then employees. The Board concluded that by refusing to "reinstate" the five men at the conclusion of the strike, and thereby "discharging" said "employees", respondent did, by each of said "discharges" engage in an unfair labor practice.

The Board's order was, briefly, that respondent cease and desist from "discharging" any of its "employees" because of membership in A. R. T. A.; that respondent offer the five men "reinstatement" to their former positions and that respondent make the five men whole (and more than whole) for any loss of pay suffered by reason of their "discharge" (R. 47-48). This order cannot be sustained unless the five men were employees at the time that respondent refused to take them back. Men who do not occupy the status of "employees" cannot be "discharged" nor can they be "reinstated". The Board's order is not that respondent cease and desist discriminating in the "hire" or "re-employment" of men; it is an order that respondent cease and desist "discharging" men.

The Board found that prior to the date of the claimed "discharge" these men had ceased work; that they went on strike. The Act defines the word "employees" as including persons who ceased work "as a consequence of or in connection with any current labor dispute or because of any unfair labor practice." If, therefore, these five men were "employees" at the time respondent refused to take them back and thus, as the Board concludes, "discharged" them, it must be because they ceased work in connection with a current labor dispute.[1]

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[1]It never has been claimed herein that there was any unfair labor practice at any time prior to the time when the men applied for re-employment.

The question of whether the five men so ceased work was not an issue under the pleadings, was not claimed by the Board's counsel to be an issue and was never tried. The issue tried was whether respondent discriminated in the "hire" or "re-employment" of the five men; and respondent has been found guilty of discriminating by "discharging" said men. The Board did not attempt to prove that the men ceased work in connection with a current labor dispute or because of an unfair labor practice.

The charges made by the Board, somewhat ambiguously, in its original complaint were, in substance, two; certainly not more than two[2], to wit:

1. That respondent *discharged* the five men;
2. That respondent *refused* thereafter to *re-employ* them (R. 3, 4).

At the opening of the hearing, these issues were further narrowed by eliminating the claim of a wrongful discharge. Counsel for the Board, by his opening statement of what he intended to prove, eliminated entirely the question of a wrongful discharge and restricted the issues of fact to the single question of a wrongful *refusal* to *re-employ* (R. 134-5).

At the conclusion of the plaintiff's case, counsel for respondent made a motion to dismiss, in which he stated his understanding that the single issue of fact[2] was the alleged *refusal to re-employ.* (R. 857). Counsel for the Board did not dissent from this statement, but tacitly acquiesced therein. Respondent's counsel then suggested that if the Board did intend to charge any other unfair labor practice, it should be required to do so by filing an amended complaint at that time, before respondent should be called upon to produce its evidence, so that respondent might "know what it is rebutting". (R. 857). Thereupon the Trial Examiner suggested that counsel for the Board should then announce his intention of applying for leave to file an amended complaint, "if you

[2]Disregarding the charge of a company-dominated union, which was later dismissed (R. 39-44, 48).

intend to do so". Counsel for the Board then applied for leave to file an amended complaint "to conform to proof". (R. 859).

On the following day, counsel for the Board produced and filed his amended complaint. At the suggestion of the Trial Examiner, it was stipulated that "all of the allegations of this amended complaint be deemed denied by respondent", except that admissions in the original answer should be deemed to apply to the amended complaint. (R. 900-901).

That amended complaint (which has been so *industriously* ignored by the Board's counsel at all times since the Board's decision was filed)[3] restricted the issues of fact to the single question of a wrongful *refusal to re-employ* former employees.[4]

By the filing of the amended complaint, the Board approved and confirmed the action of its counsel in eliminating, by his opening statement, the issue of wrongful *discharge,* and restricting the issues of fact solely to the question of wrongfully *refusing to re-employ former employees.* Thus, naturally and necessarily, the respondent's evidence was directed and *limited* to this one issue.

The action of the Board, in preparing and filing that amended complaint, is highly significant in another aspect. It represented *the Board's appraisal of the evidence.* By preparing and filing that pleading, "to conform to the proof", after the plaintiff's evidence was all in, the Board went on record as declaring, in effect, that the evidence justified *only* the charge of wrongful *refusal to re-employ former employees.*[5]

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[3]In the Board's decision, the amended complaint is ignored throughout, except for the casual mention, in a footnote that "the complaint was amended * * * so as to make *a few* of the allegations conform to the proof * * *" (R. 17). (All italics herein are supplied.) So also, the Board's counsel, throughout their brief herein, *meticulously* ignore the amended complaint; merely remarking *en passant* that "the Board issued an amended complaint * * * changing the complaint in several *minor particulars* in order to conform it to the proof" (P. Br. 5).

[4]See footnote (2), supra.

[5]See footnote (2), supra.

Thus, the issue tried was not whether respondent discriminated by discharging employees (or by refusing to reinstate employees who had ceased work as a consequence of or in connection with a labor dispute or because of an unfair labor practice) but whether respondent discriminated by refusing to re-employ *former* employees. As employer cannot "re-employ" a man who is then and there his employee. He may "reinstate" him but he *cannot* "re-employ" him.

The issue was clear. The Board did not call even one witness to testify as to what transpired in New York whence apparently originated the strike order. The labor dispute, if any, occurred in New York because it was there that the A. R. T. A. representatives were supposed to be negotiating with respondent's representatives. If it had been material to prove that the men ceased work in connection with a current labor dispute, testimony as to what went on in New York was essential. The Board did not regard this testimony as material, and properly so, for there was no allegation that the men were employees, as defined in the Act or otherwise. There was no allegation that they had "ceased work in connection with a current labor dispute"; no allegation that the negotiations had failed; or that there had been any negotiations. There was not even an allegation that the men had ceased work. The allegation was that respondent had refused to "re-employ" men who were formerly employees. There would have been no difficulty in obtaining witnesses had it been material to prove what happened in New York. O. M. Salisbury, one of the A. R. T. A. representatives in New York, was present during the hearing and even took the witness stand to testify about other matters (R. 971, 185).

Had there been any issue upon the question of whether the men ceased work in connection with a current labor dispute, or any issue involving a "failure of negotiations", respondent could have called representatives of the company who participated therein. However, under the issues tendered by the amended complaint, such testimony would have been irrelevant and immaterial. No reason existed

for calling from New York to San Francisco, any one who may have been present at the negotiations, to testify about a matter which was not in issue.

Counsel's persistent disregard of the importance and significance of the amended complaint, enables them happily to ignore the unhappy fact that the entire order of the Board rests indispensably upon a question of fact as to which the respondent *never had a day in court.* The Board's order, in its entirety, rests upon its conclusion that respondent committed an unfair labor practice by *discharging* five *employees* (R. 46). The Board's finding that respondent "discharged" those employees "by refusing to reinstate [them] to employment" (R. 46), obviously means that respondent had wrongfully refused to reinstate in active service five employees who actually were its employees *at the time of such refusal.* The reinstatement to active service of a *present* employee is an entirely different matter from the *re-employment* of a *former* employee. Respondent could not *re-employ* one who was in its employ at that time.

It cannot be doubted that the Board knew, and had in mind the important difference between the *discharge* of an *existing* employee and the *re-employment* of a *former* employee. There could have been no other reason than this for the preparation and filing of the amended complaint, the sole effect of which was to eliminate the one charge and retain the other. This is confirmed by the Board's conclusions of law,—that respondent, by these *discharges,* "discriminated in regard to the *tenure* of employment" (R. 47, 5(a) and (b)). If the discrimination had consisted of a refusal to *re-employ,* the conclusion of law would have been "discrimination in regard to *hire*" (Act, Section 8 (3)).

If there can remain any possible doubt that the Board's decision and order are predicated *solely* upon a wrongful discharge, as distinguished from a wrongful refusal to re-employ, that doubt will be utterly dispelled by reference to the Board's order (R. 47-8). It orders respondent to cease and desist (a) "from *discharging* or threatening to *discharge* any of its employees * * * "; (R. 47) (b) It orders

respondent to "make whole said * * * [employees] for any loss of pay * * * by reason of their *discharge* * * * from the date of *his discharge* * * * the rate each was paid at the time of his *discharge.*" * * * (c) It orders respondent to "Post immediately notices * * * stating (1) that the respondent *will not discharge* * * * members of, or those desiring to become members of, the American Radio Telegraphists' Association * * * " for any cause whatsoever, not excluding theft, forgery, arson or murder (R. 48).

It is thus demonstrated that

a. Respondent was *tried* solely upon a single charge;[6] namely, wrongful refusal to re-employ former employees; the restriction of the issues to this single charge was emphasized by the opening statement of counsel and reaffirmed by the amended complaint filed in response to respondent's request "to know what it is rebutting" (R. 853).

b. Respondent was *convicted* of an entirely different charge, namely, wrongful discharge of existing employees; that charge was not merely *omitted* from the issues; it was *excluded* therefrom affirmatively and with exceptional emphasis.

The situation thus presented is much more grave, and cuts much more deeply than that which ordinarily is suggested by the contention that the allegations of the complaint do not sustain the Board's order. Here is a situation where the respondent has been utterly and completely deprived of its "day in court" upon the fundamental issue of fact upon which the Board's order is predicated. Every pertinent circumstance of the proceedings before the Board tended to assure respondent that it need defend itself only against the charge of wrongful refusal to re-employ former employees, to wit: the filing of an original complaint which alleged wrongful discharge and perhaps suggested the intent also to charge wrongful refusal to re-employ; the opening statement definitely eliminating the issue of wrong-

[6] See footnote (2) supra.

ful discharge and standing squarely and solely upon the issue of wrongful refusal to re-employ; the omission to offer evidence in support of the discarded issue; the filing of the amended complaint in response to respondent's demand to know, with certainty, the Board's claims. From the time of the opening statement, on the first day of the trial, until the filing of the Board's decision, two months after the conclusion of the trial, there was no issue in this proceeding as to any unfair labor practice other than the alleged wrongful refusal to re-employ former employees.[7]

A similar, but much less aggravated, situation came before this Court in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427, 430, wherein an order of the Commission was annulled upon the ground that it was not supported by the allegations of the complaint. No question of the sufficiency of the complaint had been raised, either before the Commission or in the Circuit Court of Appeals. The Court said:

> "Such an order should follow the complaint; otherwise it is improvident, and, when challenged, will be annulled by the Court". (p. 427.)

There was a strong dissenting opinion. The dissenting justices pointed out that "unfair methods of competition" are not defined in the statute; that it is the policy of that statute that the Commission, in its complaint, shall charge the facts of which it complains and shall make findings upon those issues; that it will then be for the Court to determine whether the facts found show "unfair methods of competition"; and that the allegations of the complaint therein were such that the respondent could not possibly have been misled to his injury. There is an important difference in the situation here. Each separate "unfair labor practice" is specifically defined in the Act. The respondent here was unequivocally charged with one specific unfair labor practice; was tried on that charge alone; and then was found guilty of an entirely distinct and different wrong.

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[7]See footnote (2), supra.

It is submitted that under the dissenting opinion in the *Gratz* case, as well as under the majority opinion, the order of the Board herein was "improvident". The dissenting justices said:

> "The function of the complaint is solely to advise the respondent of the charges made, so that he may have *due notice and full opportunity for a hearing thereon.* All that is requisite in a complaint before the Commission is that there be a *plain statement of the thing claimed to be wrong,* so that the respondent may be put upon his defense" (p. 430).

There was, in the amended complaint herein, just such a plain statement, but the thing claimed to be wrong was a distinct and different wrong from that of which respondent was found guilty. Respondent *never* "was put upon his defense" in respect of *that* wrong.

In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 47, this Court said:

> "The Act establishes standards *to which the Board must conform.* There must be a complaint, notice and hearing."

The Act provides that the complaint shall state the charges in respect of any unfair labor practice which the person complained against has engaged in [Sec. 10(b)]. The Board's complaint, as amended, charges discrimination by refusing to "re-employ" the five men. The Board's order is that respondent cease and desist "discharging" the five men. Respondent was never called upon to prove that the five men did not cease work in connection with a current labor dispute and therefore that they were not employees and could not be discharged.

The requirement that the complaint advise an employer of the charge against him is said by this Court to be one of the protective provisions securing the employer "protection against arbitrary action". In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, it was held that none of these protective provisions had been trans-

gressed. We submit that in the case at bar a vital protective provision has been transgressed and that respondent has been the victim of arbitrary action.

Counsel's contention,[8] that respondent cannot complain because it failed to make objection at the hearing before the Board, is not well founded. Respondent had no opportunity to make this objection, for the reason that it did know or suspect, until after the Board's decision had been rendered, that it was to be found guilty of an unfair labor practice with which it was not charged and which had been excluded from the issues at the hearing before the Board.

The fact is that by the Board's own act, respondent was deprived of any opportunity to complain to the Board that the order was based upon an issue never tried. The Board's rules provide for the preparation by the Trial Examiner of an Intermediate Report to which a respondent can take exceptions.[9] It might well have been that if the Trial Examiner, who understood the status of the pleadings and heard the evidence, had been permitted to make his Report, it would have followed the issues. At least, if the Trial Examiner had made the same mistake that was made by the Board, respondent could have taken exception thereto. By refusing to permit the Trial Examiner to make an Intermediate Report, the Board deprived respondent of any possible opportunity to call to the attention of the Board the fact

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[8] P. Br. 36.

[9] "Sec. 32. After a hearing for the purpose of taking evidence upon a complaint, the Trial Examiner shall prepare an Intermediate Report (including findings of fact, separately stated) which he shall file with the Regional Director issuing the complaint, who will thereafter transmit the original of the Intermediate Report to the Board at Washington, D. C. and cause a copy thereof to be served upon each of the parties to the preceding. * * *"

Sec. 34. If any party desires to take an exception to the Intermediate Report or to any other part of the record * * * he shall within ten days * * * file with the Board at Washington, D. C., * * * a statement in writing setting forth such exceptions. * * *"

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that the findings and decision are upon an issue which has never been tried.

The Board followed this same *unusual*[10] procedure, of depriving itself and the employer of the benefit of a report of the Trial Examiner, in *Consolidated Edison Company of New York, Inc.* vs. *National Labor Relations Board* (C. C. A. 2, March 14, 1938). The Court there said:

> "This procedure is not one likely to inspire confidence in the impartiality of the proceedings. It results in findings of fact being made by persons who did not see the witnesses—a matter which may have far-reaching consequences in view of the very limited power conferred upon the Courts to review the Board's findings of fact."

In the absence of an Intermediate Report by the Trial Examiner, respondent had no opportunity whatsoever to make this objection before the Board. The Board cannot now complain of respondent's failure in this respect when the Board's own acts and the inadequacy of the Board's own procedure deprived respondent of its right to present its defense and of all opportunity to present said objection.

It is submitted that there has been a grave infringement, in this respect, of respondent's constitutionally-guaranteed rights of due process of law. This being so, the judgment of the court below, which denied the Board's petition for the enforcement of its order, was *correct* for this reason, apart from all other considerations.

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[10] "The usual practice of the Board is to permit the Trial Examiner to file an Intermediate Report and in such case, on request by respondent, to hear argument upon exceptions to that report." (P. Br. 6, footnote 1.)

II. The judgment of the court below denying enforcement of the Board's order should be affirmed because the Board failed to find that the five men refused employment at the conclusion of the strike were employees, as defined in the Act.

The Board ordered respondent to cease and desist discharging its employees, to reinstate five discharged employees and to pay them wages from the time of the discharge until the making of an offer of reinstatement. This order can be supported only if the five men were employees and were discharged. The Board did not find that they were employees. To the contrary, the Board found that on October 4, 1935, they voluntarily ceased work; that they "went on strike" (R. 21). Under the Act he who ceases work "as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice" is included within the definition of "employee". But there is no finding that the five men ceased work as a consequence of or in connection with a current labor dispute; there is no finding that they ceased work because of an unfair labor practice.

The findings disclose that in September 1935, an agreement concerning wages and working conditions for the operators employed by respondent to operate its point-to-point system, was presented by A. R. T. A. to respondent for its consideration. The marine operators had also presented to respondent, for its consideration a "system agreement" for marine operators, who are employed by the steamship companies (R. 20).[11] Thus, one proposed agreement involved respondent's employees and one did not.

Neither of these agreements was offered in evidence. The proposed marine agreement involving steamship com-

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[11]The record does not make the status of marine operators entirely clear, but it does show that the marine operators are employees, not of respondent, but of the shipowners (R. 1098). The assignment to or recommendation for the job is made by respondent (R. 281). The marine operator, as his name indicates, goes to sea (R. 153).

pany employees was called the "Marine Hiring Agreement" (R. 1099). The proposed point-to-point agreement involving respondent's employees was called the "Point-to-Point General Wage and Working Agreement" (R. 1099). The findings make it clear that the Board understood that the "Marine Hiring Agreement" referred to steamship employees for they refer to the charge that respondent "was *recommending* non-A. R. T. A. marine operators to the steamship companies" (R. 20).

The findings do not disclose what provisions the Marine Hiring Agreement contained, but it appears from the record, including the findings, that it did not involve the terms or conditions under which *respondent's* operators were employed. It may have involved terms or conditions of employment by shipowners and the part respondent was to play in recommending men for such employment.

The findings disclose that the marine and point-to-point divisions of A. R. T. A. resolved to unite for joint action on the two agreements so that one could not be adopted to the exclusion of the other (R. 21).

The Board's findings imply that A. R. T. A. representatives had some negotiations with respondent, for the finding is that they decided "a strike was advisable in view of the unsatisfactory state of the negotiations" (R. 21). Notwithstanding counsel's assertions (P. Br. 21), there is no finding whether these negotiations concerned the agreements above referred to or either of them; no finding what these negotiations concerned; no finding when they commenced; no finding that there was any controversy at all with reference to either of said agreements.

The mere presentation to respondent of the agreements did not constitute a controversy or dispute, especially where, as here, the union negotiators were not authorized to make any change therein. *Lauf* v. *E. G. Shinner & Co.* (decided Feb. 28, 1938) is believed not to be in point. In that case, this Court held that the refusal of an employer to comply with the demand that he compel his employees to join a certain union constituted a "labor dispute" as those words are

defined in the Norris-La Guardia Act. In the case at bar, there is, however, no finding of a refusal of any demand.

In fact, there is no finding as to what either party did in respect of the proposed agreements after they were submitted to respondent, and there could not well be such a finding because no person testified who had anything to do therewith. Yet the Board could have produced *competent* testimony as to what transpired in New York, because O. M. Salisbury, who apparently was present at the New York negotiations (R. 21) was present during the hearing before the Board and was even sworn as a witness (R. 971-2; 185).

The findings do disclose that after the A. R. T. A. abandoned whatever negotiations were had, respondent's employees at San Francisco went out on strike (R. 21). There is no finding as to who called the strike or why it was called. The minutes of the A. R. T. A. meeting of September 13, 1935, lead readily to the inference that the point-to-point operators walked out on a "sympathy strike" for the marine operators (Bd. Ex. 2, R. 1096). These minutes record Loudermilk's opinion "that the PTP [point to point] men should threaten a *sympathy* strike with the marine men if they were to refuse to sign their agreement" (R. 1099). Following this discussion a resolution was passed uniting the Point-to-Point and the Marine Divisions of the Local for the purpose of "joint action as pertains to any and all negotiations" with Respondent on the two contracts (R. 1099). Nothing in the record nor in the Board's findings rebuts the inference that this was a sympathy strike, nor is it inconsistent with the Board's finding that the strike was called because of the unsatisfactory state of negotiations. Counsel must have overlooked this evidence when they said, "There is no basis for respondent's contention that the strike in San Francisco, where the unfair labor practice occurred, was merely a sympathetic one; * * *." (P. Br. 14).

If there was a controversy and if it concerned the Marine Hiring Agreement, the controversy did not concern terms or conditions upon which respondent was employing or was to employ *its* operators. If the point-to-point men ceased

work because of some controversy involving the Marine Hiring Agreement (a sympathy strike), they did not cease work in connection with "a current labor dispute".

The mere finding that the men went on strike is not a finding that they ceased work in connection with a current labor dispute. If every strike is *per se* a labor dispute and strikers are thus included automatically in the definition of employees, (P. Br. 29, 33) it is necessary to "read out of the Act all of Section 2 (9), which limits the term "labor dispute" to controversies concerning terms of employment or representation of employees. Employees sometimes strike in sympathy with others. Sometimes they strike before any controversy has arisen, because of the whims of their leaders. For all that is shown by the findings, the men may have gone on strike for some such reason and not because of any controversy constituting a "labor dispute".

Counsel concede that "the findings of the Board did not state in so many words that the strike was a current labor dispute" (P. Br. 32). Respondent has never had the opportunity to call this defect to the attention of the Board. As pointed out above, the question of whether the men ceased work in connection with a current labor dispute was not even litigated, and respondent did not know it was involved until after the Board had made its findings.

Not only did the Board omit to find the ultimate fact as to why the men went on strike; it failed to find any facts from which it can be fairly concluded that there was a controversy, or if there was, what the controversy was about. The Board found that respondent's employees ceased work on October 4, 1935, but failed to find whether or not the quitting was in connection with a labor dispute. Under such findings it is impossible to support the Board's order requiring respondent to cease and desist discharging persons who were not found to be employees at the time of the discharge, or its order requiring reinstatement of such discharged persons. The judgment of the Court below denying enforcement of the Board's order should be affirmed.

The Board's realization of the weakness of its case is evidenced by its effort, at this very late day, to shift its position once more. It now urges, even in the absence of a finding that the men were employees, that its order be enforced upon the basis of discrimination in the *hire* of former employees (P. Br. 16, 19, 49-54). The answer to this is that the order says nothing about ceasing and desisting discriminating in the *hire* of men. It orders respondent to cease and desist *discharging* men. If the Board had intended to pursue the theory of discrimination in the hire of men (as was indicated in its amended complaint) it abandoned that theory when it prepared its order. Without here arguing what the Board might have done in respect of an order made upon the assumption that respondent discriminated in the hire of men (and an order compelling respondent to hire men gives rise to most serious constitutional questions) the fact is that the Board did not make such an order. Its order was that respondent cease and desist discharging employees and that order cannot be supported because there is no finding that the men refused employment were employees; and no finding of facts from which that conclusion follows.

III. The Board's order directing reinstatement of the men with back pay was an excess of the Board's authority under the Act.

A. The facts as found by the Board.

We will assume, without conceding and only for the purpose of the argument of this Point, that the Board found that the strikers ceased work in connection with a current labor dispute. Counsel for the Board assert that the Board found that the strike followed a *failure* of negotiations (P. Br. 14). They assume that to be the fact in their statement of "Questions Presented" (P. Br. 2). The Board did not find that negotiations had failed. Neither did it find that respondent had been guilty of any unfair labor practice prior to or during the strike.

According to the Board's findings, respondent was engaged in negotiating with representatives of A. R. T. A. when, in the midst of negotiations, the members of A. R. T. A. went on strike. The only finding on this subject was:

> "On October 4 the ARTA negotiators in New York decided that a strike was advisable in view of the unsatisfactory state of the negotiations." (R. 21).

The Board found that at midnight, all of the San Francisco force then on duty went on strike and that all but one or two employees joined in the strike (R. 21).

This is not a finding that negotiations failed; it is a finding that negotiations were abandoned by the employees. Negotiations do not fail until they have reached a deadlock; that is, until further negotiations will be of no avail. Perhaps the word "failed" could be used in the sense that negotiations failed when the employees abandoned them. But the employees did not cease negotiations because negotiations failed; the negotiations failed because the employees "walked out" in the midst of the negotiations.

The Board's findings do not support the statement in its Brief that "negotiations had continued for several months without success" (P. Br. 7). The findings disclose that negotiations did not commence until some time subsequent to September 13, 1935. There were no negotiations in June, 1935, when the A. R. T. A. point-to-point agreement was first presented to respondent. The members of A. R. T. A. at that time agreed that negotiations should be postponed because of contemplated bankruptcy proceedings involving respondent (R. 20). The agreement was again presented in September, 1935. No negotiations were requested until September 13th when A. R. T. A. representatives advised Stone, vice-president of respondent, that they were considering "joint action" on the marine and point-to-point agreement. Stone asked and was given time to return to New York and study the point-to-point agreement (R. 20-21).

There is no finding as to when negotiations commenced on the two agreements. Indeed, there is no finding that the negotiations which the employees abandoned even involved both of the proposed agreements. But assuming they did, there is no finding that such negotiations had been in progress for one week or one hour when the employees walked out. The findings do not support counsel's statement that negotiations continued for several months (P. Br. 29). Neither do the findings support counsel's statement that the employees had "continuously pressed" "demands" "for more than a month under repeated threats of strike" (P. Br. 31). They do not support the statement that respondent refused the "demands" "with counter-threats of retaliation."

Counsel apparently attempt to convey the impression that respondent had made an unsatisfactory counter-offer (P. Br. 30). The Board did not so find. All it found was that the negotiators became dissatisfied with the state of negotiations and the employees walked out. Counsel's statement is based upon a recital in the minutes of the A. R. T. A. meeting of Oct. 4, 1935. The minutes recited that Bash said that Salisbury said that Stone had made the counter-offer in question (R. 1101, 419). If the Board gave credence to this hearsay, twice removed, it is not apparent, because it made no finding based thereon.

Even if this hearsay were to be given serious consideration, it shows that negotiations were proceeding in the customary manner, with A. R. T. A. making demands and respondent offering substantial concessions. The Board does not call attention to any evidence that negotiations had reached the hopeless stage and, so far as we are aware, there was none. The Board's finding is clear enough that the employees walked out in the midst of the negotiations.

During the strike respondent transferred a number of its employees from other places to San Francisco with the understanding and promise that they could remain there if they wished (R. 28, 748, 817). Five remained. Therefore, at the end of the strike, there were five more

strikers than there were jobs. Respondent reemployed all but five of the sixty-eight strikers. The Board found that respondent's action in re-employing sixty-four members of the rank and file in preference to Loudermilk, Bash, Palmer and Rone was because those four were "the leaders of the Local which had just caused it to pass through a costly strike" (R. 32); that the sole reason respondent failed to re-employ Phelps was because he was a member of the Local (R. 39). Phelps was neither active in the Local's affairs nor in the strike (R. 37).

B. An employer may employ new workers during a strike, where he has not been guilty of an unfair labor practice, and at the conclusion of the strike, his failure to re-employ strikers whose jobs have been filled will not constitute an unfair labor practice.

Respondent is engaged, as a public utility, in the business of communication, under a mandatory duty to maintain that service for the benefit of the public.[12]

Respondent's employees went on strike at a time when it had not committed any infraction whatsoever of the Act. It was then respondent's right, if not its duty, to employ others to fill the place of the strikers, and, in connection therewith, to promise them permanent employment.

Unless it be concluded that all of the strikers in this case were entitled to their jobs when they asked for them, to the exclusion of the workers hired during the strike, respondent had a right to refuse employment to five strikers. This is a primary and fundamental premise. Whether it was an unfair labor practice to refuse to give preference to the other strikers rather than the *particular* five strikers here in question will be considered in subsequent subdivisions of this Point. To determine the soundness of the primary and fundamental premise we must determine whether the failure to discharge men hired during a strike which

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[12] "Section 201 (a). It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; * * *" (48 Stat. L. 1070; USCA Title 47, Sec. 201)..

was neither provoked nor prolonged by any unfair labor practice, and the failure to reemploy strikers in their stead, discouraged *membership* in a labor organization or interfered with the procedure of collective bargaining; and we must determine whether compulsory reinstatement of *all* such strikers would effectuate the policies of the Act.

This Court has made clear the purpose of the Act and the reason why it is a proper exercise of Congressional power to protect interstate commerce. Like the Railway Labor Act, the National Labor Relations Act provides machinery for the *peaceful* settlement of labor disputes. In both Acts, the machinery provided is negotiation by the employer with the representative of the employees. As this Court said in the *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45:

> "The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act itself does not attempt to compel."

Since, as the Court there pointed out (p. 42), refusal to confer and negotiate has been "one of the most prolific causes" of strikes with the consequent interruptions of commerce, the requirement of negotiation not only provides machinery for the settlement of labor disputes but removes one of the principal causes of such disputes.

Both Acts are designed to provide a means of avoiding interruptions to commerce caused by strikes. The purpose of each is thus to protect and promote interstate commerce. The principles of both Acts are the same. In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines* (decided February 28, 1938) this Court said:

> "Congress, in enacting the National Labor Relations Act, had in mind the experience in the administration of the Railway Labor Act, and declared that the former was an amplification and further clarification of the principles of the latter."

In *The Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 130, this Court said that the provisions of the Railway Labor Act requiring the carrier to treat with the representatives chosen by the employees were "in all material respects analogous to the statute here under consideration." In the same case, referring to the National Labor Relations Act, the court stated that "the experience under the Railway Labor Act has demonstrated the efficacy of such legislation in *preventing* industrial *strikes* and obviating interference with the flow of interstate commerce."

In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, (decided February 28, 1938) this Court said:

> "The history of the Act and its language show that its ruling purpose was to protect interstate commerce by securing to employees the rights established by Section 7 to organize, to bargain collectively through representatives of their own choosing, and to engage in concerted activity for that and other purposes."

It is not the purpose of the Act either to strengthen or to weaken labor organizations. It is made an unfair labor practice to discriminate against an employee for the purpose of either *encouraging or discouraging* membership in a labor organization. It is not the purpose of the Act to compel the employer to employ either union men or non-union men; or to compel the employer to accede to the demands of his employees; or to compel the employees to accede to the demands of the employer. It is not the purpose to give either the employer or the employee an advantage in any labor dispute that may occur. Rather, it is the purpose to allow economic forces to have free play subject only to the requirement that employers must negotiate with the representatives of employees, and that they must not interfere with employees in their choice of representatives. The purpose is to provide a forum wherein these economic forces can exert their energies, and the

forum is to be the council table at which shall sit the representatives of the employees and the representatives of the employers. By this means Congress has sought to protect interstate commerce from interruptions caused by strikes. The philosophy of the Act, as we understand this Court's exposition of its purposes, is that if employers and employees, through their representatives, will sit down and peacefully negotiate, many strikes will be prevented; that if employers will cease interfering with the free right of employees to choose their representatives for such negotiation an important cause of strikes will be eliminated; and that, if strikes do occur, the negotiation which the Act requires between employers and strikers will enable the early settlement of many strikes.

Where the employer has, prior to and during a strike, fully complied with the provisions of the Act, he should be free to hire new employees to carry on his business. If he hires new employees, he will have more employees than there are jobs, for under the Act strikers who cease work in connection with a current labor dispute are also defined as employees. If the strikers offer to come back to work, the employer must leave someone without a job. Must he discharge his new employees and take back all the strikers? If it be held that he must do so, then the striker will be guaranteed his job whenever he wishes to return to work, even though the employer be blameless.

If the employer in such case is guilty of violating the Act by retaining his new employees and refusing to replace them with strikers, then the Act guarantees the striker his job whenever he wants it. The only exception would be where the employer closes down his business forever. The Act does not so provide, and it is our contention that to so construe the Act would thwart rather than accomplish its purposes. By guaranteeing a striker his job, where the strike was neither provoked nor prolonged by the refusal of the employer to negotiate or by any other unfair labor practice, peaceful negotiation would be discouraged and strikes would be encouraged. Such a result is not in accord

with the purposes of the Act, nor is it consistent with its philosophy.

The Act does not make it an unfair labor practice to discriminate against striking employees because of their activity in an unprovoked strike. It is made an unfair labor practice to discourage *membership* in a labor organization. But the failure of some of the strikers to get back their jobs is not because of their *membership* in a labor organization. It is because they have voluntarily, without any wrongful or provocative act of the employer, opened their jobs to others. The reason they are not re-employed is not because they are members of a union but because they have struck under such circumstances that the employer has rightfully employed others to take their places.

In the free play of economic forces which are loosed by a strike, the employer seeks to avoid a strike because by completely or partially closing down his business he is unable to secure revenue to pay his rent, interest on loans, and other fixed charges, is unable to comply with his contracts and stands in danger of permanently losing many of his customers to his competitors. The employee seeks to avoid a strike because during a strike he is partially without income and because there is a danger that his job will not be open for him when he returns. True, the loss of income is not always a compelling force, because under modern conditions nationally organized unions have funds with which to recompense the striker for a part of his loss of income and because federal relief agencies are available to strikers. But there is always, or at least always has been, the danger of losing his job—a real deterrent against strikes. This deterrent does not abrogate the *right* to strike (Sec. 13) but it at least makes peaceful negotiations more attractive.

To construe the Act so that such striking employees are guaranteed their jobs would paralyze one of these economic forces, and indeed the most important one so far as the employees are concerned. If the employee can strike knowing that his job will be waiting for him, or that if it is not

waiting for him the Labor Board will compel the employer to make it available to him, together with full pay for time lost, then one of the great economic forces which would tend to keep industry functioning and commerce moving is gone. It cannot possibly facilitate or encourage collective bargaining to provide that an employee who strikes in the midst of the procedure of collective bargaining and at a time when the employer is fully complying with the provisions of the Act, cannot be refused reemployment because of his strike activity, or, to put it affirmatively, to provide that under such circumstances a striker must be reemployed.

The failure to reemploy a striker does not interfere with employees in their free choice of representatives. Under the Act, the employees, whether they be real employees or striking employees, are free to choose representatives. Under the Act the employer must negotiate with his employees whether they be real employees or striking employees. They may choose a striker as their representative. The failure to reemploy a striker does not interfere with the procedure of negotiation. Indeed, the failure to employ a striker in no way changes the status which he has voluntarily assumed. The striker has voluntarily chosen to cease work. The failure to reemploy him leaves him in the status he has chosen to occupy.

In the case at bar, according to the Board's findings, the refusal to reemploy at least one of the five strikers (Phelps) was caused solely by the fact that he was a member of the union. Since all the strikers were members of the union, it was inevitable that any five refused employment would be union members. Refusing employment to Phelps would not discourage union membership any more than refusing employment to some other union man. The refusal to reemploy him has neither encouraged or discouraged membership in A. R. T. A. It has left him in the status he voluntarily assumed without provocation on the part of respondent.

The refusal to reemploy a striker under the circumstances presented in this case is in no sense analogous to that which arises when an employer *discharges* an employee because of union activity. There the employer *alters* the employee's status to his detriment and in a manner calculated to destroy his free right to choose his representatives for collective bargaining. It makes it appear unsafe to belong to a union and thus discourages membership. Nor is it analogous to the situation where the employer wilfully provokes a strike and thus, by indirection, gets rid of employees whom he could not lawfully discharge. The courts will not permit an employer to do by indirection that which the Act proscribes. Nor is it analogous to the situation where an employer provokes or prolongs a strike by refusal to negotiate or by any other unfair labor practice.

Counsel cite a number of cases (P. Br. 22) in support of their contention that "the Board has the power exercised in the case at bar." They are not cases where the employees walked out in the midst of negotiations. In each of them, (with the exception of *Mooresville Cotton Mills* v. *National Labor Relations Board,* (C. C. A. 4) 94 F. (2d) 61, wherein a petition for rehearing is pending), the employer had refused to negotiate and had thus violated the Act. His right to select his employees had thus become "vulnerable".

Respondent had willingly recognized A. R. T. A. as the employees' bargaining agent; had negotiated with it willingly and freely; and, apparently, was actually in the process of such negotiations on the very day when the strike occurred. Respondent's "ordinary right to select its employees" therefore remained "invulnerable" at that time.

> "From the date of respondents' first unfair practice, its ordinary right to select its employees became vulnerable" (*Black Diamond Steamship Corporation* v. *National Labor Relations Board* (C.C.A. 2, decided February 14, 1938).[13]

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[13] The Board repeatedly invokes the authority of this decision and relies heavily thereon (P. Br. 22, 40, 41, 49).

The present situation is one where, without provocation, the employee has chosen his status and has risked his job in order to use the strike as a weapon, instead of resorting to peaceful negotiation, to achieve his end. The failure to re-employ him leaves the employee where he placed himself.

The well settled rules of statutory construction support our view. In *United States* v. *Katz*, 271 U. S. 354, Mr. Justice Stone, speaking for the court, said:

> "All laws are to be given a sensible construction; and a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, *consistent with the legislative purpose.* [Citing cases.] In ascertaining that purpose, we may examine the title of the Act [citing cases], the source in previous legislation of the particular provision in question [citing cases], and *the legislative scheme or plan by which the general purpose of the Act is to be carried out* [citing cases]."

C. Where the employer has not discriminated against union men in re-employing men at the conclusion of a strike and where the lack of available jobs has made it necessary that he refuse employment to some of the strikers, discrimination as between members of the same union does not discourage membership therein.

The Board has found that four of the strikers were not refused employment simply because they were strikers but because they were "the leaders of the Local which had just caused it (respondent) to pass through a costly strike." (R. 32.) Its conclusion was that this constituted an unfair labor practice.

We assume, as a premise and as argued above, that respondent had the right to refuse employment to five strikers, having lawfully hired five other men during the unprovoked strike. Five strikers had to be left out. Does the Act make it an unfair labor practice to select for re-employment the rank-and-file members of the union in preference to the leaders who interrupted the negotiations by the strike, at a time when there had not been any unfair labor practice?

It may be conceded that this would have a tendency to discourage the calling of unprovoked strikes in the midst of peaceful negotiations.

As we understand it, the Act is not intended to encourage such strikes by improving the economic position of the leaders of such strikes, or otherwise. We do not deny that respondent's employees had a *right* to strike when they did, but we do deny that favoring the leaders of such a strike at the expense of their followers will "effectuate the purposes of the Act." The Act seeks to protect employees in their right to bargain collectively and to choose representatives for that purpose. It does not seek to protect the leaders of unions, as against the rank and file, regardless of what they may do.

Whenever the employer does something that hampers the procedure of collective bargaining, whether by discriminating against employees on account of their union membership or otherwise, he may fall afoul of the Act. But where that which he does has no tendency to interfere with employees in their full exercise of collective bargaining, then the Act has no application.

We say that the preference in re-employment which was accorded herein to the rank and file members of the union, rather than to the leaders who had led them into an unprovoked and disastrous strike, did not interfere or tend to interfere with any activity protected by or sought to be facilitated by the Act. The restriction of the employer's right to hire and discharge his employees can be justified only to the extent that such restriction is necessary and proper to accomplish the purposes of the Act. The Act should be so construed as to accomplish its purposes, not to defeat them. Any exercise by the employer of his right to re-employ men after an unprovoked strike which does not interfere with the scheme of peaceful negotiation which the Act fosters, does not constitute an unfair labor practice.

An order compelling an employer in re-employing strikers to re-employ strike leaders would not "effectuate the policies of this Act." It would encourage resort to the strike

instead of resort to peaceful negotiation. To thus guarantee the jobs of leaders who take the rank and file into a strike which is unprovoked by any unfair labor practice is to put a premium on striking instead of bargaining.

After all it is only common justice that if anyone must suffer because of this uncalled for strike, it should be the leaders who caused it. One of the four leaders who were the last to apply for re-employment, was man enough to take this position. The Board found that he said that he held off applying for reinstatement because "he did not think that he, an officer in the Local, should apply for work until the other men had returned." (R. 25.)

When members of a union apply for re-employment at the conclusion of an unprovoked strike and there are more applicants than there are jobs, the selection of some of them, no matter who they are, does not discourage *membership* in a union. The discouragement of union *leaders* from leading their followers into unprovoked and unnecessary strikes will not tend to discourage *membership* in the union. It will have a negative tendency to encourage collective bargaining, in lieu of the strike, and thus will tend, in the long run, to *encourage* union membership.

D. Assuming, without conceding, that the action of respondent in selecting the rank and file members of the union for re-employment as against certain leaders thereof was an unfair labor practice, the order of reinstatement was in excess of the Board's authority under the Act.

An employee who strikes prior to any unfair labor practice has no assurance that his job will be open for him when and if he offers to return to work. The Act does not constitute a guarantee to him that his job will be waiting.[14] He has no absolute *right* to be re-employed. It is believed that discrimination as between such strikers does not discourage membership in the union. But if it does discourage membership, the most that a striker has, is a right to *apply* for re-employment and to be considered without any prejudice because of his union membership or activity.

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[14] See Paragraph B of this Point.

This right to ask re-employment free from any discrimination arising from union activities, does not give to any individual striker the absolute right to a job. In the case at bar, there were five more applicants than there were jobs. No one applicant had the *right* to be re-employed.

The Board has found that when respondent considered the applications of the five men, it rejected four because they were leaders in the Local that went on strike and one because he was a member of A. R. T. A. We are assuming, solely for the purpose of this discussion, that by so doing, respondent violated the Act. It is our contention that the five men have no more *right* to a job now than they had in October 1935 when they made application. It is our further contention that the Act was never intended to guarantee anyone a job; that it is remedial in character and that the five men are entitled to no more than to be restored to the status that they occupied at the time they were refused employment, i. e., applicants for jobs, and entitled to fair consideration as such.

If it was an unfair labor practice to select the other members of A. R. T. A., rather than these five men, it is the first and only one, according to the record, of which respondent has ever been guilty. The five men taken on during the strike, who elected to remain, were taken on at a time when respondent's record was entirely clean; a time admittedly *prior* to the occurrence of any unfair labor practice; a time when respondent's "ordinary right to select his employees had not become vulnerable." So far as appears from the record, respondent's present employees are competent and entirely blameless. As between them and respondent, it would be a legal wrong, as well as ethically unjust, for respondent now to discharge them.

It is submitted that the Congress never intended to authorize the Board to compel an employer to discharge competent employees, who were rightfully employed by a blameless employer, at a time when there had been no infraction of the Act, solely in order to make room for strikers who had elected to strike, without the provocation of *any* infrac-

tion of the Act, instead of negotiating in conformity with the policy of the Act.

What, then, was the *status* of the strikers when they elected to abandon the strike and sought to return to work?

They were "striking employees." They were not "employees" in the true legal sense of the word; neither were they "strangers" to the employer. They were in "a relationship between employer and employee that is neither that of a general employer and employee, nor that of employer and employee seeking work from them as strangers." "It is true that a striker is not technically an employee." *Jeffery-De Witt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134, 137.[15] This does not mean that they could return to work before a new contract should be made between them and respondents.[16]

What, then, were the rights ("guaranteed by the Act") of these "striking employees", who were neither employees nor strangers, at the time they sought to return to work?

For the purpose of this question, we shall *assume* (but, emphatically, we do not *concede*) that they had "ceased work in connection with a current labor dispute" (Section 2(3)). So assuming, they were "employees", as defined by the Act. They were entitled, therefore to "reinstatement", *if* the Board should find, upon the *evidence,* that such reinstatement "will effectuate the policies of this Act" (Section 10(c)).

Reinstatement to what? Reinstatement to the *status quo,* which *existed at the time the unfair labor practice occurred.*[17]

Counsel concede this principle, though differing with us upon what constituted the *status quo* when the five men were

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[15]This decision also is cited as authority, and much relied on by the Board. (Pet. Br. 22, 40, 41, 43, 49.)

[16]See Point IV of this brief.

[17]*Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board, supra; National Labor Relations Board* v. *Remington Rand, Inc.*, C. C. A. 2, decided Feb. 14, 1938 (This decision is likewise cited as authority by the Board. P. Br. 33, 41.)

refused employment. They state, "Power was vested in the Board to require reinstatement of employees discriminated against in violation of the Act in order that the coercive effect of such discrimination might be dissipated by restoration of the status quo existing prior to its commission" (P. Br. 38-39).

The status of the five men at the time they were refused re-employment was that of applicants for jobs. They had no right to the jobs; their right, under the facts here assumed, was to ask and receive consideration of their applications, without discrimination which would discourage union membership. Reinstatement to that status will restore the five men to the *status quo* existing prior to the occurrence of the assumed discrimination. If there were then or should thereafter be places open, the five men were entitled to fair consideration for those jobs.

But, on the other hand, if there were no places open, and no places then held by men who could be justly discharged because they had been hired after the unfair labor practice, *then* the utmost right of the returning strikers was to be "placed on a preferencial list."[18] This is the express holding of *Black Diamond Steamship Corp.* v. *National Labor Relation Board,* and the necessary result of the reasoning and conclusions expressed in *National Labor Relation Board* v. *Remington Rand, Inc.*

Incidentally, it may be of interest to note that this meaning of the word "reinstatement", which was adopted and applied in the two last mentioned cases is precisely that which was adopted by Judge Wilbur, in his second opinion below, (R. 118), which counsel are pleased to characterize as "an extraordinarily strained meaning" (P. Br. 38). It also is precisely the meaning which was adopted and given application by the Board in its own decisions in *Jeffery-De Witt Insulator Co.* v. *National Labor Relations Board* and *Black Diamond Steamship Corp.* v. *National Labor Re-*

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[18] *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board, supra.*

lations Board. We gladly join counsel for the Board in invoking the Court's attention to these two decisions.

If employees resort to the strike *before* an unfair labor practice has occurred, they relinquish thereby any right they may have had to be reinstated to active service with back pay. This is so, even though the strike is called as a consequence of a current labor dispute.

> "All engineers were employees under the Act, having left work in consequence of labor disputes. But having done so *before,* any unfair labor practice, they were relying, and were *only* entitled to rely, upon a test of economic strength."[19]
>
> "The Act so far as reinstatement is concerned *only applies after* there has been an unfair labor practice."[19]
>
> "So far as there were not places filled by engineers hired *after* December 14 [the date of the unfair labor practice] *no offers to reinstate needed to be made.*"[19]

When a strike is called in the absence of an unfair labor practice, *even where negotiations have failed,* to require the employer to give back their jobs to the strikers, "would indeed load the scales in an industrial dispute".[20] How much more so, where, as here, the strike is called in the very midst of negotiations which *have not failed.* The use of the strike "in a controversy *where the men are right,* ought not * * * to be prejudicial to them."[20] Can it be said that "the men are right", when they strike in the very midst of peaceable negotiations which have *not failed?*

This brings us to the question: What remedy was the Board authorized by the Act to apply in the present case, by way of "reinstatement", as that word is construed in the only applicable court decisions, and as construed by the Board in its own decisions?

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[19] *Black Diamond Steamship Corp.* v. *National Labor Relations Board, supra.*

[20] *National Labor Relations Board* v. *Remington Rand, Inc., supra.*

Bearing in mind that these men struck in the midst of negotiations which had not failed, and before any unfair labor practice; that their places had been rightfully filled by others employed *before* any unfair labor practice; that there were no places open to them; and that no places could be made for them other than by wrongfully discharging other employees who, both in law and in justice, were entitled to remain; it is submitted that there can be but one answer to this question. The Board was authorized (under the facts assumed for the purposes of this question) to order "reinstatement" only to the extent of restoring these men to their *status quo,* to wit, applicants for jobs with a right to fair consideration for employment, when vacancies should occur. Respondent placed these men upon a preference list, before any complaint had been made to the Board (R. 24, 1121, 1131, 1136, 1139).

The Board's order, insofar as it required the reinstatement of these men to active service, with back pay, was in excess of the authority conferred upon the Board by the Act,[21] even if we assume, in the Board's favor, all of the following disputed facts: that the negotiations had failed; that the strike was in consequence of a current labor dispute; and that respondent committed an unfair labor practice in rejecting these particular men.

It may be conceded, for the purpose of this argument, that, if this were an unfair labor practice, the Board would be authorized thereby to make an order to cease and desist from discriminating in regard to hire and tenure of employment. But no such order was made. The order was to "cease and desist from discharging or threatening to dis-

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[21] "The * * * powers granted the Board under Sec. 10(c) are *only remedial;* they are designed to enable it to restore the *status quo* as nearly as possible had the wrong not been committed; *further it may not go.*" *National Labor Relations Board* v. *Remington Rand, Inc., supra; Black Diamond Steamship Corp.* v. *National Labor Relations Board, supra.*

charge * * *." (R. 47). These men were not entitled to get their jobs back because there were no jobs open, and none which lawfully could be made open to them.

As they were not entitled to be restored to active list, it cannot be said that they were "discharged" by placing them on the preference list, which was *all* and *more* than they were entitled to.

Therefore, resolving every factual question in favor of the petitioner, the fact remains that the order was in excess of the Board's authority under the Act; and the decision of the court below should be affirmed.

The vast extent of the authority and power claimed by the Board is now revealed in stark simplicity. The Board's thesis herein, when reduced to its fundamentals, may be stated as follows:

> (a) Every strike is *per se* a current labor dispute (P. Br. 29, 33); (regardless of the occasion, the purpose or the circumstances thereof); therefore,
>
> (b) All strikers retain *in full* the status of employees (P. Br. 42); therefore,
>
> (c) All strikers entitled to get their jobs back, whenever they may see fit to ask for them; therefore,
>
> (d) Every refusal of an employee to reinstate strikers, upon demand therefor, is *wrongful;* therefore,
>
> (e) The Board is authorized and empowered to order the reinstatement of strikers, with an award of back pay, in every case where their demand for reinstatement has been refused.

Thus the Act, as construed by the Board, *guarantees* their jobs to employees, upon whatever terms and conditions

they may demand, unless the employer shall elect to give up his business.

We cannot believe that the Congress ever intended that this Act should have such far reaching consequences.

IV. If the provisions of the Act be construed to empower the Board to order respondent to re-employ strikers where the strike was not provoked or prolonged by any unfair labor practice, such provisions constitute such an arbitrary, capricious and unreasonable taking of property and interference with the liberty of contract that they are violative of the Fifth Amendment.

A. When an employee strikes without provocation, he terminates his contract of employment.

The Act does not expressly empower the Board to order an employer to cease and desist refusing to hire or re-employ any particular men. Such an order, in negative phraseology, would compel an employer to hire certain men. The Act does not expressly empower the Board to compel an employer to hire or to re-employ former employees. It should not be construed to give the Board such power because to do so would make such provisions violative of the Fifth Amendment.

An employee who strikes without provocation terminates his contract of employment. It is true that upon such termination he does not occupy the same status as an employee who quits with the intention of never returning. At the same moment the striker quits he offers to accept re-employment upon the terms which he demands or upon such other terms as he and his employer can thereafter agree upon, whereas the employee who quits makes no such offer. For want of a better term he who strikes is called a "striking employee." In *Michaelson* v. *United States* (C. C. A. 7), 291 F. 940, 942 (reversed on other grounds 266

U. S. 42), which the Board relies upon (P. Br. 42), the court states that strikers "say to their employer":

> " 'We shall stop work until you are in what we may consider a more reasonable state of mind. We shall deprive you of our labor as a legitimate means of exerting economic pressure to induce you to yield. If we do go out, we shall remain at hand, ready to *negotiate* with you concerning fair wages and working rules, and ready to return to work *the moment we can agree.*' "

However, the employee cannot come back to work unless the employer accepts his offer nor can the employer force him to come back to work unless the employee agrees upon the terms of employment. A new offer and acceptance—a new contract—is essential to again create the relationship of employer and employee.[22]

This Court has recognized that the legal status of employer and employee is terminated by a strike. In *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, a union declared a strike against complainant's plant. Only two of complainant's employees, Churchill and Cook, went out on strike. Mr. Chief Justice Taft, speaking for the court, referred to Churchill and Cook as "the ex-employees." (p. 207.)

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[22] The contention (P. Br. 42): "The Act clearly provides that during a labor dispute *the strikers* retain IN FULL the status of employees", illustrates the extreme lengths to which the Board is driven in its efforts to justify its order. If that assertion were true, it would follow that the strikers breached their employment contract during every day that they remained on strike. It indubitably is the duty of a "full-status" employee to report for work and to work for his employer during working hours, obeying the reasonable directions of the employer. Obviously, an employer cannot compel a striker to return to work. Nor can the striker return to work, without entering into a new contract relation with the employer.

Every strike "concerning terms, tenure or conditions of employment" *necessarily presupposes an abrogation of the former contract* and the proposal to enter into a *new and different contract.* It *cannot* mean anything other than this.

In *Truax* v. *Corrigan,* 257 U. S. 312, Mr. Chief Justice Taft referred at page 340 to "ex-employees on a strike." At page 320 he referred to the cooks and waiters who were on strike as being "formerly in the employ of plaintiffs." The question involved was whether an Arizona statute deprived the employer of equal protection of the laws and thus violated the Fourteenth Amendment. The court stated at page 338:

> "It is urged that this court has frequently recognized the special classification of the relations of employees and employers as proper and necessary for the welfare of the community and requiring special treatment."

The court then cited a number of cases involving workmen's compensation statutes. It then said at page 339:

> "It seems a far cry from classification on the basis of the relation of employer and employee in respect of injuries received in course of employment to classification based on the relation of employer, not to an employee, *but to one who has ceased to be so,* in respect of torts thereafter committed by such *ex-employee* on the business and property right of the employer."

Dissenting opinions were filed in that case. In the dissenting opinion written by Mr. Justice Pitney he referred at page 350 to the strike there involved as "a dispute between employer and former employees."

In *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, Mr. Justice Brandeis filed a dissenting opinion, in which he stated that the acts of employees in striking "sever the continuity of the legal relationship."

The legal status of a striking employee and employer is made clear in *Brown* v. *Central West Coal Co.,* 200 Mich. 174, 166 N. W. 850, where a question arose under the Workmen's Compensation Act as to the length of time during which a man had been continuously employed. The court said:

> "When the decedent, a locomotive crane operator, left the employ of the coal company on the occasion of

> a strike, June 21st, the relations of master and servant, of employer and employe, were at an end. It required a new contract, a new employment, to restore such relations."

There are numerous cases to the same effect.[23]

The fact that the Act defines the word "employees" as including strikers does not *create* between an employer and a striker the *contract relationship* of employer and employee. Congress cannot by fiat create such relationship. Congress can define the word "employee" as including strikers or any other persons who are not actually employees. So also Congress could define "stock brokers" as including lawyers; and statutory regulations imposed upon stock brokers would then be binding also upon lawyers. But this would not make all lawyers stock brokers in point of fact. So also Congress might impose regulations involving "servants" and from the context of the legislation it might be clear that the word "servants" was intended to include lawyers. Assuming the power of Congress to regulate lawyers, a reference to "servants" where the context of the statute made clear that lawyers were intended to be included in the word "servants", would effectively impose the regulation.

The cases cited by petitioner (P. Br. 42-43) are not in conflict with the principle above announced that strikers do not occupy the legal status of an employee and that they cannot again resume that status until a new contract of employment has been made. They are illustrative of the example above given with reference to servants. In the cases involving the Clayton Act, where reference is made to "employees", the context of the Act clearly shows that it was intended to apply to strikers. Strikers were the only

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[23] *Birmingham Trust & Savings Co.* v. *Atlanta B. & A. Ry. Co.* (D. C. N. D. Ga.), 271 F. 743, 745, 746;
Union Pac. R. R. Co. v. *Ruef* (C. C. D. Neb.), 120 F. 102, 114;
Goldfield Consol. Mines Co. v. *Goldfield Miners Union* (C. C. D. Nev.), 159 F. 500, 519;
Douglas v. *Metropolitan Life Ins. Co.* (Mo.), 297 S. W. 87, 90.

ones against whom it was contemplated that injunctions would be issued. Thus *Michaelson* v. *United States*, 291 F. 940, and *Dail-Overland Co.* v. *Willys-Overland Co.*, 263 F. 171, are not in point. They do not hold that a new contract is unnecessary before a striker can again resume the relationship of employee. They merely hold that strikers were included within the definition of the word "employees" used in the Clayton Act. In *Greenfield* v. *Central Labor Council*, 104 Ore. 236, 192 Pac. 783, strikers were held to be employees within the meaning of a section of an Oregon statute identical in language with Section 20 of the Clayton Act. So also in *Fryns* v. *Fair Lawn Fur Dressing Co.*, 114 N. J. Eq. 462, 168 A. 862, the word "employees" as used in the N. I. R. A. was held to include strikers because it was apparent that Congress intended to include them within the definition of the word "employees." Neither *State* v. *Personett*, 114 Kan. 680, 220 Pac. 520, nor *Uden* v. *Schaeffer*, 110 Wash. 391, 188 Pac. 395 holds that a new contract is not necessary to restore a striker to the status of an employee. They merely call attention to the fact that a striker seeks to return to work on better terms.

In *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134, the statement of the court that "Irrespective of the statute, therefore, the strike did not of itself result in a complete severance of the relationship which had been established between the company and its employees" does not support the Board's contention. It may be conceded that the strike does not, of itself alone, effect a *complete* severance of the relationship, yet it does, nevertheless, sever the *contract* relationship so that it cannot be restored, except by the mutual assent of both parties. The *Jeffery* case does not hold or even state that a new contract is unnecessary before a striker can resume the relationship of employee. In *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, the court approves the statement in the *Jeffery* case, but again fails to go so far as to state that a striker can resume work without a new contract.

Whatever name the courts may attach to a striker, whether it be striking employee or some other name, and whatever definition Congress may give to the word "employees" whether it includes strikers or not, the fact remains that when an employee goes on strike the contractual relationship of employer and employee terminates, and it cannot again be resumed except upon the making of a new contract. The striker may offer to come back to work upon his terms but he cannot come back until his offer is accepted. Upon such acceptance a new contract of employment arises.

B. If the Act be construed to empower the Board to compel respondent to enter into a contract, it is void.

The Board has ordered that respondent offer employment to five strikers. It is ordered that respondent offer to make a contract with each of them. Petitioner contends that the Act has empowered the Board to make that order and that the order is supported by the Board's findings. It is our contention that if the Act empowers the Board to make such an order the Act is, to that extent, void. We do not believe that Congress can compel any individual, against his will, to enter into such a contract for the performance of obligations. The statements of this Court indicate a fixed opinion that if Congress should attempt to pass such legislation it would be void as violative of the Fifth Amendment. The Court has said of the National Labor Relations Act "the Act does not compel agreements between employers and employees. It does not compel any agreement whatever."[24]

In considering the validity of the Railway Labor Act, as amended in 1934, the Court upheld it, pointing out specifically that it did not "compel the employer to enter into any agreement," implying, it seems to us, that if it had sought to exert such compulsion upon the employer it would have been to that extent void.[25]

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[24] *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1, 45.

[25] *Virginian Ry.* v. *System Federation,* 300 U. S. 515, 557.

In *National Union Fire Insurance Co.* v. *Wanberg,* 260 U. S. 71, this Court has given even clearer indication that any statute which attempted to impose a contract upon an unwilling individual would be absolutely void. In that case the court had under consideration a North Dakota statute which provided that in the event an agent of an insurance company should accept an application for a policy covering hail insurance, the insurance contract should take effect twenty-four hours after the acceptance of the application unless the company should notify the applicant to the contrary. The contention was made that the statute violated the Fourteenth Amendment by "affirmatively imposing a contract on an insurance company before it has had a chance to consider the circumstances and decide that it wishes to make it." When the argument was made that a "statute mandatory obligation is substituted for freedom of contract, which is just that against which the Fourteenth Amendment was intended to secure persons" the court said:

> "We agree that this legislation approaches closely the limit of legislative power, but not that it transcends it." (p. 74).

The Court clearly implied that if the statute had *imposed* a contract on the insurance company, it would have transcended legislative power, but held that this statute did not impose a contract upon the insurance company, stating as follows:

> "This does not force a contract on the company. It need not accept an application at all or it can make its arrangements to reject one within twenty-four hours. * * *.
>
> There is nothing in the statute under discussion which requires a company to receive applications * * *." (p. 76).

The provisions of the Act approved in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* are not in conflict with the principles above set forth. It is recognized that every contract has a "congenital infirmity" in that it is enacted subject to the power of Congress to change its incidents in so far as those changes are necessary or proper to enable Congress to exercise its delegated powers. This does not mean, however, that Congress can impose a *new* contract upon individuals. Congress can properly add an *incident* to contracts between employers and employees by providing that an employer cannot discharge an employee for the purpose of interfering with the employee's right of engaging in collective bargaining and choosing his representatives for the purpose of such activity.[26] But this is not to say that after the legal relationship of employer and employee has terminated and at a time when it can be resumed only by the execution of a new contract, that Congress can impose that new contract upon the employer or that Congress may empower an administrative board to impose it. Such legislation would be, and the Act here in question is, if it authorizes such procedure, so arbitrary, unreasonable and capricious as to be absolutely void.

This does not mean that where an employer fails to comply with the Act and thus provokes his employees into a strike, he may not be compelled to continue the relationship of employer and employee. The Act provides that an employer may not discriminatorily discharge employees, may not refuse to bargain collectively with their representatives, and may not do other acts which interfere with their fundamental right to organize and bargain collectively. Thus the Act, to this extent, has amended every contract of employment. If the employer breaches that contract, as amended, the employee is not bound to carry out his part

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[26] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*

of the contract and is therefore free to quit, or to stop work, temporarily, without surrendering his contract status.[27] On the other hand, where the employer has not breached the contract, as amended, the employee has no right to cease work and still maintain the status of an employee. There is therefore nothing arbitrary or unreasonable about compelling the employer to carry out his contract by resuming the relationship of employer and employee with his former employees who have ceased working because of his violation of the employee's contract. Upon this ground the decisions in *National Labor Relations Board* v. *Remington Rand, Inc.* (C. C. A. 2; decided Feb. 14, 1938) and *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 91 F. (2d) 509 might be upheld.

The facts in *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134, *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 and *Black Diamond Steamship Corporation* vs. *National Labor Relations Board* (C. C. A. 2; decided Feb. 14, 1938) are distinguishable from the case at bar. In those cases the employees did not strike in the midst of negotiations with the employer; they did, as in the case at bar, strike prior to any unfair labor practice on the part of the employer. However, in those cases, but not in the case at bar, it was found the employer during the strike violated the Act by refusing to negotiate with the strikers, and this fact gives rise to the distinction.

Furthermore, the *Jeffery* case did not consider or decide the constitutional problem which we are here raising. We have examined the briefs of the employer in that case and find that the validity of the Board's order under the

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[27] In 39 Corpus Juris 95, it is said:

> "Instead of treating the contract as rescinded and suing on quantum meruit, a servant who has been wrongfully discharged may treat the contract as continuing, notwithstanding its breach by the master, and sue for damages for the wrongful discharge, either immediately, at any time during, or at the expiration of the term; * * *"

Fifth Amendment was not argued. The court stated that in view of the decisions in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* and the other cases decided at the same time, contentions going to the constitutionality of the Act had been "virtually abandoned." In *KVOS* v. *Associated Press,* 299 U. S. 269, 279, this Court quoted from *Webster* v. *Fall,* 266 U. S. 507, as follows:

> "Questions which may lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents."

The construction which we urge does not impair the Act in so far as it requires the employer to negotiate, during the course of a strike, with strikers who have ceased work in connection with a current labor dispute. Such a requirement, as pointed out in both *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* and *Virginian Railway Co.* v. *System Federation,* does not impinge upon the employer's constitutional rights. However, to require an employer to negotiate is a far cry from imposing a contract of employment upon an unwilling employer.

The Board argues that it is necessary to construe the Act as empowering the Board to compel an employer to reemploy all strikers whether or not the strike was provoked by a violation of the Act. The reason given is that otherwise an employer might, by acts otherwise quite lawful, such as reducing wages, provoke a strike, so that he might thereby rid himself of various members of a union and thus discourage membership in the union (P. Br., 46). It is not necessary, in order to protect employees against such wrongful acts of the employer, to impose a new contract upon the employer. Such conduct on the part of the employer might well be regarded as a wrongful discharge of the employee. The Board and the courts, where an employer sets out upon such a course of conduct in order that he may by indirection accomplish that which the Act forbids him to do directly, will look

through the transaction and treat it as a discharge of employees, accomplished by a subterfuge.

Under Point III of this argument we have contended that it was not the intention of Congress to compel the employer to enter into new contracts of employment where he did not provoke the strike. If it was the intention of Congress to empower the Board to impose a contract upon an employer under such facts as exist in the case at bar, then the Act is to that extent void, because legislation which empowers an administrative board to *compel* a person to assume contractual relations with another is so obnoxious to the basic principles of our Bill of Rights that it cannot stand.

C. The provisions of the Act, if construed as imposing upon respondent an extension of the contract beyond the agreed term, are as violative of respondent's fundamental rights as compelling a new contract to cover the period beyond the agreed term.

In his dissenting opinion in the court below Judge Garrecht argued that the order of the Board did not impose a new contract upon respondent. The Board adopts this argument (P. Br., 44-45). His argument was, in effect, that Congress in the exercise of its power to regulate commerce had added a new incident to the old contract of employment and that the order of the Board was merely enforcing the old contract as amended by the statute. This argument is not sound because its premise is false. If the provision defining the word "employee" is to be regarded as an amendment to the contract of employment rather than a mere definition of the term "employee," the amendment is as follows:

> "Provided however that notwithstanding the fact that the contract is terminated by the employees ceasing work in a strike, the term of such contract shall be automatically extended to cover the period of the strike."

Thus by legislation Congress has added not an *incident* to the contract but has *created* a contract for a period of time never agreed upon by the parties. The agreement of the parties was that the contract was to continue at the will of either party but was to terminate in the event the employee should strike.[28] Under Judge Garrecht's interpretation, Congress has created a contractual relationship which is to commence at the time of the agreed termination of the contract and is to continue during the strike. If Congress cannot empower the Board to impose a new contract upon the employer, it cannot extend the term of the existing contract and thus empower the Board to deal with the relationship created by the extended term. In either case the employer would be compelled to undertake contractual relations with a person subsequent to the termination of the contract to which he had agreed. There is no difference in the result. In either case the employer would end up by employing persons under compulsion whom he would not have employed but for the provisions of the Act.

Judge Garrecht's construction of the Act is not supported by cases which hold that Congress may modify *incidents* of the contract if such modifications constitute a proper exercise of its delegated power. To extend a contract beyond the period of time to which the parties agreed is not a mere incident of the contract; it is in fact creating a new contract for a new term.[29] This was recognized in

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[28] See *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 207; *Truax* v. *Corrigan*, 257 U. S. 312, 320, 338, 340; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *Brown* v. *Central West Coal Co.*, 200 Mich. 174, 166 N. W. 850.

[29] The cases cited by the Board (P. Br. 45, 46), affirming governmental power to "restrict freedom to enter" into contracts, do not, as the Board implies, affirm its power to force *a new contract* upon an unwilling party. They do not affirm the existence of governmental power to "restrict freedom to * * * refrain from entering" into contracts, as the Board euphemistically phrases its startling contention. This, we submit, is a far cry from compelling reinstatement of an employee who has been wrongfully discharged (P. Br. 48, 49). The latter but restores the *status quo*, prior to the wrongful act. The former would impose a new and different *status*.

Block v. *Hirsh,* 256 U. S. 135, where a statute applicable to the District of Columbia provided that contracts of tenants occupying rental property were "to continue notwithstanding the expiration" of their terms, at the option of the tenant, subject to certain regulations. This legislation was emergency legislation incident to the World War with the provision that it should be effective for only two years unless sooner repealed. In upholding the validity of this statute Mr. Justice Holmes pointed out that "a public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation." And the court held "the regulation is put and justified only as a temporary measure." This case has been the subject of considerable comment. In *Pennsylvania Coal Co.* v. *Mahon,* 260 U. S. 393, 416, Mr. Justice Holmes, speaking for the court, said that *Block* v. *Hirsh* "went to the verge of the law." The fact that it was sustainable only as emergency legislation has been referred to in other cases.[30]

If *Block* v. *Hirsh* "went to the verge of the law" what can be said of the Act as here construed by the Board? *Block* v. *Hirsh* was only a temporary measure by which the rental term was to be continued during an emergency. In the case at bar the statute as construed by the Board imposes a contractual relationship upon an employer and employee during the period of a strike and thus enables the Board further to deal with that relationship by compelling the employer to employ persons whom he does not choose to employ. There is nothing temporary about this Act. It is not justified by any emergency.

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[30] *Adkins* v. *Children's Hospital,* 261 U. S. 525;
Tyson and Brother v. *Banton,* 273 U. S. 418;
Home Building & Loan Assn. v. *Blaisdell,* 290 U. S. 398.

D. The purpose of the Act can be accomplished without construing it as empowering the Board to compel employers to enter into contracts.

It is not, in order to accomplish the purpose of the Act, essential to construe it as empowering the Board to compel an employer to reemploy specified strikers or to hire any particular men where his refusal to re-employ or hire constituted forbidden discrimination. Assuming that respondent was guilty of an unfair labor practice in refusing to re-employ the five men, an order could have been made requiring respondent to cease and desist discriminating in the re-employment of the strikers on account of their union activity or membership. That order would not have impinged upon rights guaranteed by the Fifth Amendment for it would not have compelled respondent to enter into any specific contract. It would have left respondent free to choose its employees on the basis of merit, seniority or any other basis except membership or non-membership in a labor organization. The purpose of the Act would have been served by the elimination of the discrimination violative of the Act. If such an order had been made and enforced and if respondent had thereafter discriminated in violation of the Act, the Circuit Court of Appeals would stand ready to hear contempt proceedings and make appropriate orders. The statute should be construed to avoid any substantial doubt of constitutionality.[31] The purpose of the Act can be accomplished without construing it so as to impose, or authorize the Board to impose, any contract upon an employer.

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[31] *Crowell* vs. *Benson*, 285 U. S. 22, 61, 62, 76, and cases cited.

V. Respondent was entitled, under Article III, Sections 1 and 2 of the Constitution[32] to the independent judgment of the court below upon the facts, at least insofar as the "jurisdictional facts"[33] are concerned.

The purpose of the Act is the protection of interstate commerce from interruptions by strikes. The method selected by Congress is to encourage collective bargaining and, without prohibiting strikes, to discourage them, so far as practicable. As a means to this end, Congress set up the Board as a tribunal for the protection and enforcement of those rights of employees which were deemed essential to the effective functioning of the processes of collective bargaining. Congress might have provided for the protection of those rights in either, or both, of two ways. It could have denounced conduct which would invade those rights as a public offense by prohibiting them or by declaring them to be unlawful. Or, it could have provided a system of *civil remedies,* both preventive and remedial, for the protection of those rights. Congress chose the latter course.

The rights which are thus guaranteed are solely the private rights of employees. The "unfair labor practices" defined in the Act are *not public offenses;* they are not prohibited or declared to be unlawful. They are merely invasions of private rights, the effect of which is to entitle the injured employees to the civil remedies, preventive and compensatory, which are afforded by the Act. The Board is a *quasi-judicial* tribunal set up for the adjudication of

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[32] "Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. * * *

"Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, * * *."

[33] We are using the expression "jurisdictional fact", somewhat loosely, to describe a fact, the existence of which, under the terms of the Act, is an indispensable condition precedent to the authority of the Board to make the order here in question.

claimed invasions of those rights, and to award the appropriate remedies therefor.

Thus, while the *purpose* of the Act undoubtedly is the *public* purpose of protecting commerce from interruptions by strikes, the *means* adopted to this end consist solely of the providing of *civil remedies* (preventive and compensatory, but *not* punitive) for the protection of *private* rights.

The proceeding before the Board herein was primarily, if not solely, for the enforcement of the private rights of the private complainants, aimed at the securing of an injunction and money damages. The position of the Board, as the nominal plaintiff was closely analogous to that of a guardian ad litem, or a trustee of an express trust, suing to enforce the right of his *cestuis que trustent.* This proceeding, therefore, was, in substance and in effect, a "Case in Law or Equity arising under the Laws of the United States", within the jurisdiction which is vested in the Courts by the Constitution. It follows that the respondent was entitled to "the independent judgment of the Court upon the facts", at least as to the so-called "jurisdictional facts".

If the court below had "enforced" the Board's order, the result thereof would have been, in substance and effect, precisely the same as if each of the five former employees had instituted and maintained to a successful conclusion a bill in equity for the specific enforcement of his alleged employment contract, based upon the employer's alleged breach thereof, with an incidental award of money damages. It is submitted that a proceeding before the Board with this as its paramount purpose and aimed directly at this result is, fundamentally, a case in equity, and thus encroaches upon the constitutional provisions which vest exclusive jurisdiction over "all Cases, in Law and Equity" in the courts of the United States. The order made by the Board herein, in substance and effect, is in all respects equivalent to a declaratory judgment in equity which determines and declares the respective rights and obliga-

tions of the parties, leaving the enforcement thereof to further proceedings (such as, for example, a decree determining and declaring the plaintiff to be the owner of the disputed premises, but leaving the defendant in possession thereof).

It is submitted that the proceeding before the Board in this case was a proceeding primarily, if not exclusively, for the enforcement of strictly private rights in the nature of property rights, for the benefit of the private owners of those rights. In this respect it differs radically and in a vitally important respect from proceedings before the Federal Trade Commission.

It has been supposed by many, and was urged by the Board in the court below, that the Labor Relations Act is substantially parallel in all respects with the Trade Commission Act. This assumption has led to much confusion, but it is not correct. It is true that the Labor Relations Act in its *procedural* provisions is almost entirely parallel with the Trade Commission Act. In the *substantive* provisions, however, there is a difference which is of vital importance.

All proceedings before the Trade Commission are solely, or at least primarily, for the prevention or redress of *public* wrongs. In all such proceedings the real plaintiff is the United States, suing for the prevention or redress of a public offense, namely, an act which has been expressly prohibited or expressly declared to be unlawful. The Labor Board has no jurisdiction over *any* such *public* offense. While in proceedings before the Board it is the nominal plaintiff, the real plaintiff is an employee or group of employees, who are suing for the enforcement of the private property rights which are guaranteed to them by the Act. The Board prepares and issues the complaint for them and prosecutes the proceeding in their behalf, substantially in the capacity of a guardian *ad litem*, or as the trustee of an express trust, suing for the enforcement of the rights of his *cestuis que trustent*.

The wrongs over which the Trade Commission has jurisdiction (15 U. S. C. A. 21, 45) are those which are made public *offenses*, by sections 13, 14, 18, 19 and 45 of U. S. C. A. Title 15 (15 U. S. C. A. 21). Each of those wrongs is expressly prohibited or expressly declared to be unlawful. The doing of any of the prohibited acts therefore is a public offense, a wrong against the United States.

There is no comparable situation under the Labor Relations Act. That Act creates no public offense whatsoever, except the offense of wilfully resisting, impeding or interfering with the Board or its agents in the performance of their duties (Section 12). The Board has no jurisdiction over a prosecution for that offense. Its jurisdiction is strictly limited to proceedings for the enforcement of private rights.

The Act declares and guarantees certain private rights pertaining to a class of private persons, namely, "employees." They are guaranteed the following *private* rights:

> "* * * the *right* to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." (Section 7).
>
> "* * * the *right* at any time to present grievances to their employer." (Section 9(a)).

"* * * the *right* to strike." (Section 13.)

All of the foregoing are private rights inhering in private persons, and constitute property, so that an injunction will issue for the protection thereof. *Texas & N. O. R. Co.* v. *Brotherhood, etc.*, 281 U. S. 548.

In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc., supra*, this Court said:

> "The history of the Act and its language show that its *ruling purpose* was to protect interstate commerce by *securing to employees the rights* estab-

> lished by Section 7 * * *", (citing *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*; *supra.*)

Again the Court said:

> "To *secure to employees* the *benefits* of self organization and * * * the Board was authorized by Section 10 (c) to order the abandonment of unfair labor practices and to take affirmative action which would carry out the policy of the Act."

That is precisely what the Board did herein, to secure to employees *their* benefits under the Act. Surely, the *rights* of employees, guaranteed to them by the Act, and *their benefits* thereunder, are their private property. See also, to this effect, *National Labor Relations Board* v. *Remington Rand, Inc., supra* and *Black Diamond Steamship Corp.* v. *National Labor Relations Board, supra.*

The Act (Section 8) defines as "unfair labor practices" certain acts of an employer which would tend to invade or infringe those private rights. But it *does not prohibit* any of those unfair labor practices, nor does it declare them to be unlawful. In short, Congress determined that "unfair labor practices" shall have the status of private wrongs, but shall not amount to public offenses. The Act is comparable in this respect to a statute which defines slander and provides a civil remedy by an action for damages. It is, of course, true that the Labor Relations Act was enacted in the public interest. This is equally true of the statute which defines slander and affords a civil remedy therefor. The latter statute undoubtedly was enacted in the belief that the public peace and the public interest would be served by affording that amount of protection to the personal rights of individuals. So here Congress determined that the public interest in interstate commerce would be promoted by a statute guaranteeing the *private* rights of employees and providing *civil* remedies for the protection and redress of those rights.

In *Federal Trade Commission* v. *Klesner*, 280 U. S. 19, this Court held that a proceeding before the Trade Commission is a proceeding for the prevention or redress of a wrong against the public, a public offense, in which proceeding the United States is the real plaintiff; and that any private advantage which may accrue to the complainant in such a proceeding is merely an incident to the righting of a public wrong. In short, the private complainant in such a proceeding occupies a status analogous to that of the "complaining witness" in the conventional criminal prosecution. The Court pointed out that while there is a superficial resemblance between proceedings before the Trade Commission on the one hand, and proceedings before the Interstate Commerce Commission, or the United States Shipping Board, or under the Packers and Stockyards Act, on the other hand, nevertheless there is a difference which is of vital and controlling importance in this connection; namely, proceedings before the Trade Commission relate to public wrongs, whereas some of the proceedings before the other three commissions relate to private wrongs, i. e., invasions of private rights. It is submitted that proceedings before the Labor Relations Board, when regard is had to their fundamental character and primary object, fall inevitably within the latter class. The court said (p. 26):

> "The latter Act [the interstate commerce act] imposes upon the carrier many duties; and it creates in the individual corresponding rights. For the violation of the *private* right it affords *a private administrative remedy.*"

We need only to substitute the word "employer" in place of the word "carrier" to make the foregoing statement truly descriptive of the Labor Relations Act. In support of the foregoing statement, the Court pointed out (p. 27) that in a proceeding before the Trade Commission "a complaint may be filed *only* 'if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.'" This limitation is omitted, signifi-

cantly, in the Labor Relations Act. The court pointed out that

> " * * * to justify the Commission in filing a complaint * * *, the purpose *must* be protection of the *public*. The protection thereby afforded to private persons is the *incident*. Public interest may exist although the practice deemed unfair *does not violate any private right.*" (p. 27).

This is the very opposite of the situation under the Labor Relations Act. The object of a proceeding *thereunder* is the protection of *a private* right. There cannot be a proceeding before the Labor Board except where a private right is alleged to be invaded.

The Trade Commission is not authorized to issue a complaint unless it shall find "* * * that a proceeding by it in respect thereof would be to the interest of the public, * * *;" and in such case it shall issue a complaint stating *its* charges. (15 U. S. C. A. 45.) The corresponding provision of the Labor Relations Act is in diametric contrast thereto. The Board is not authorized to issue a complaint except when "* * * it is charged that any person has engaged in or is engaging in any such unfair labor practice, * * *." (Section 10(b).) In such case, and in such case only, the Board shall have power to issue a complaint "* * * stating *the* charges in that respect, * * *." "Unfair labor practices" violate private rights only.

In short, the Commission may issue a complaint only in respect of a public offense and only when it shall find that the proceeding will be in the public interest; and the complaint so issued is *its* complaint. See also *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 649. The Board, on the other hand, may issue a complaint only in respect of a private wrong and only when charges shall be presented to it by a private person or persons, and the complaint when

issued shall state *those* charges (i. e. the charges made by the private complainant).[34]

It is true that the government defrays the cost of litigation before the Labor Board, and in this respect the Labor Relations Act resembles the Federal Trade Commission Act rather than the interstate Commerce and other similar statutes. This, however, does not require the conclusion that the government is the real plaintiff. Proceedings before the Labor Board are quite similar in this respect to proceedings before the Small Claims Court in California. In those proceedings the plaintiff, deeming himself aggrieved, goes to the clerk of the court without an attorney and there states orally to the clerk the facts out of which his supposed grievance arises. The clerk, if he deems the facts sufficient, prepares and files a complaint and issues process thereunder. On the return day the two parties appear before the judge without counsel, and the judge conducts the trial and renders judgment. The plaintiff is required to pay a nominal filing fee, but substantially the entire cost of the litigation is borne by the State. The fact remains, however, that the litigation is strictly and solely for the enforcement of private rights and obligations.

It is submitted that the fundamental distinguishing factor, which determines the character of the litigation as either public or private, is whether the *rights* or *obligations* sought to be enforced thereby are in themselves public or private rights and obligations.

It is submitted, therefore, that where, as here, a proceeding is instituted before the Board, by private complainants, which has for its object the reinstatement of the complainants as employees, together with an award of money damages as compensation for wages lost, it is fundamentally and essentially a "Case" in "Equity" arising under "the Laws

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[34] It is interesting to note in this connection that the charges, filed with the Board by the complainants, charged solely a refusal to "re-employ" (R 2).

of the United States," and as such cannot be excluded from the jurisdiction of the courts of the United States.

We are not unmindful of the fact that in *National Labor Relations Board* vs. *Jones & Laughlin Steel Corp.*, in referring to *Texas & N. O. R. Co.* vs. *Brotherhood, supra,* which arose under the Railway Labor Act of 1926, the court said:

> "The requirement of restoration to service, of employees discharged in violation of the provisions of that act, was thus a sanction imposed in the enforcement of a judicial decree. We do not doubt that Congress could impose a like sanction for the enforcement of its valid regulation. The fact that in the one case it was a judicial sanction, and in the other a legislative one, is not an essential difference in determining its propriety."[35] (p. 48)

That statement apparently was made in response to the contention that the respondent had been unlawfully deprived of his right to a trial by jury. We suggest, with great deference, that it does not describe the situation with entire accuracy in respect of the contention which we are here presenting. It is suggested that, while the sanction imposed in the *Texas* case was a sanction *authorized* by the common law and judicially *imposed* by the court, so likewise is the sanction herein, a sanction *authorized* by the statute and judicially *imposed* by the Board.

Our conclusion, that the order of the Board herein amounts essentially and fundamentally to the award of private redress for private wrongs, consisting of the invasion of private rights, finds support in the decisions of this court. In *Meeker & Co.* v. *Lehigh Valley R. R.,* 236 U. S. 412, at 423 (a case arising before the Interstate Commerce Commission), this Court pointed out that a remedy afforded by law for the purpose of redressing a private injury is a private remedy of a civil nature, even though the wrongful act complained of be a public offense and punishable as such.

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[35] It is, nevertheless, a sanction imposed for the enforcement of a private right.

In *Baer Bros.* v. *Denver & R. G. R. R.*, 233 U. S. 479, at 486, this Court held that an award by the Interstate Commerce Commission, of damages by way of reparation, is the granting of a private remedy for a private wrong, and that the action of the Commission in granting this remedy is quasi-judicial in character. The court said (p. 486):

> "But awarding reparation for the past and fixing rates for the future involved the determination of matters essentially different. One is in its nature private and the other public. One is made by the Commission in its *quasi-judicial* capacity to measure past injuries sustained by a private shipper; the other, in its *quasi-legislative* capacity, to prevent future injury to the public."

So, here, it follows that the award of back pay by the Board was in its nature a private remedy and was made by the Board acting in a judicial, or at least a quasi-judicial, capacity. The portion of the order requiring reinstatement of the men was likewise private in nature and even more emphatically judicial in character, in that it amounted in effect to a decree in equity for the specific enforcement of a contract by means of mandatory and prohibitory injunctions.

It is submitted that respondent was entitled as a matter of constitutional right to a determination by the Court of all issues of fact, which go to the authority of the Board to make this order.

We are not contending herein that respondent was entitled to have the court weigh the evidence and make its own findings of fact upon issues of fact other than those which go to the authority of the Board to make the order requiring the reinstatement of the five men with back pay. Under the provisions of the Act, the Board's authority to make that order was dependent upon the question of fact whether those five men were employees of the respondent at the time

they applied for reinstatement.[86] The Act does not empower the Board to order reinstatement of any person other than "employees". (Section 10(c).) It defines the term "employee" as including "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice. * * * ." (Sections 2 and 3.) There is no claim herein that any unfair labor practice had occurred prior to the time when the men applied for re-employment. The men, therefore, were not employees, unless they had ceased work "as a consequence of, or in connection with, any current labor dispute;" which must have concerned terms or conditions of employment, or employee representation. (Section 2(9).) It follows that the question whether or not they had ceased work in connection with such a current dispute was a question of fact upon which the Board's authority to make the order of reinstatement and for back pay depended.

This Court has held repeatedly that where, as here, an administrative board makes an order enforcing private rights or private obligations, if the authority of the Board so to do depends upon a question of fact, the party upon whom those obligations are imposed is entitled as a matter of constitutional right to a determination of that question of fact by a lawful court of competent jurisdiction. *Crowell* v. *Benson,* 285 U. S. 22, 46-47. In the application of this rule there is a clear distinction between proceedings before the Labor Relations Board for the enforcement of private rights and obligations, and proceedings before the Federal Trade Commission for the enforcement of public rights and obligations. As the court pointed out in the *Crowell* case, *supra* (p. 50):

> "As to determinations of fact, the distinction is at once apparent between cases of private right and those which arise between the Government and per-

[86] Disregarding, for the time being, the question of discrimination.

> sons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments."

The court then said that, in cases involving *public* rights or obligations, Congress may with propriety confer jurisdiction upon administrative or legislative boards or bodies; whereas in cases involving private rights or obligations wherein a question of constitutional right, or of the board's authority to act, depends upon a question of fact, Congress has no power to withdraw such question of fact from "judicial cognizance." As this Court said in *Den* v. *Hoboken Land & Imp. Co.*, 18 Howard 272, 284:

> "To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider congress can * * * withdraw from judicial cognizance any matter which from its nature, is the subject of a suit at the common law, or in equity, * * * ."

The *Crowell* case, *supra,* involved an award made by a deputy commissioner of the United States Employees Compensation Commission under the Longshoremen's and Harbor Workers' Compensation Act. This Court held that the question whether or not the injured man was an *employee* at the time of the injury was a question of fact going to the authority of the Commission to make the award; and consequently that the defendant therein was entitled to have that question of fact determined by a court upon evidence produced before it. The same "jurisdictional" question of fact stands out herein, namely, the question whether or not the five men were *employees* at the time they applied for reinstatement. It follows that respondent herein was entitled to have that fact adjudicated by a court. Upon this subject the court said (pp. 56-57):

> "In relation to these basic facts, the question is not the ordinary one as to the propriety of provision for administrative determinations. Nor have

> we simply the question of due process in relation to notice and hearing. It is rather a question of the appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions. It is the question whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency—in this instance a single deputy commissioner—for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend. The recognition of the utility and convenience of administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action, does not require the conclusion that there is no limitation of their use, and that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the Executive Department. That would be to sap the judicial power as it exists under the Federal Constitution, and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and finality as to facts becomes in effect finality in law."

At page 60 the court said:

> "In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function."

And the court pointed out that the same rule applies to cases where constitutional rights are interposed as a defense, as in the instant case.

In the *Crowell* case, the constitutional validity of the statute was saved by construing it as not requiring the court to accept, as conclusive, findings of the Commission upon questions of "jurisdictional fact" or questions of fact re-

lating to constitutional rights. So here, it is respectfully submitted that the constitutional validity of this Act can be saved only by amending its provisions or by construing them so that the findings of the Board upon "jurisdictional" and constitutional questions of fact will be merely *prima facie,* not conclusive, evidence thereof. Such a provision in the corresponding portion of the Interstate Commerce Commission Act is the saving grace of that statute. In *Meeker & Co.* v. *Lehigh Valley R.R., supra,* 236 U. S. 412, at 430, the court said:

> "It is also urged, as it was in the courts below, that the provision in §16 that, in actions like this, 'the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated' is repugnant to the Constitution in that it infringes upon the right of trial by jury and operates as a denial of due process of law.
>
> "This provision only establishes a rebuttable presumption. It cuts off no defense, interposes no obstacle to a full contestation of all the issues, and *takes no question of fact from either court or jury.*"

The same is true in respect of the United States Shipping Board Act and the Packers and Stockyards Act, and, so far as we are advised, in respect of all other statutes whereby jurisdiction is conferred upon administrative or legislative boards for the arbitrament of constitutionally guaranteed private rights.

In *St. Joseph Stock Yards Co.* v. *United States,* 298 U. S. 38, at page 52, this Court said:

> "Nor can the legislature escape the constitutional limitation by authorizing its agent to make findings that the agent has kept within that limitation. Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be made conclusive where constitutional rights of liberty and

> property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards. That prospect, with our multiplication of administrative agencies, is not one to be lightly regarded. * * * The principle applies when rights either of person or of property are protected by constitutional restrictions. Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority."

The decision of the Court in *Crowell* v. *Benson, supra,* went further than we have any occasion to ask the Court to go herein. The Court there held, not only that the employer was entitled to the independent judgment of the court upon the "jurisdictional facts", but, also, that he was entitled to a trial *de novo,* in court, upon those issues. We do not go thus far, herein. We contend only that respondent was entitled to the independent judgment of the court below concerning the weight of the evidence upon those issues. We do not contend for a trial *de novo;* nor do we contend that the findings of the Board may be disregarded by the court. We contend only that the Act, if it be construed as requiring that the findings of the Board upon "jurisdictional facts", or upon facts upon which the constitutional rights of the respondent depend, shall be conclusive, is, in that respect, constitutionally invalid.

There was a strong dissent, by three of the justices in *Crowell* v. *Benson.* As we read the dissenting opinion, the dissent was only from that part of the majority decision which affirmed the right to a trial *de novo.* Mr. Justice Brandeis said:

> "The question is: Upon what record shall the district court's review of the order of the deputy commissioner be based?" (p. 66.)

He suggested a construction of the Act as:

> " * * * committing to the deputy commissioner the simple function of *collecting the evidence* upon which *the court will* ultimately decide the issue." (p. 77.)

Again he said, referring to the findings of the deputy commissioner:

> " * * * we assume for the purposes of this discussion, [they] may be open even on *all questions of the weight of the evidence.*" (p. 88.)

Respondent did not have the benefit of the independent judgment of the court below upon *any* issues of fact. Judge Wilbur (R. 78, 88), Judge Garrecht (R. 92) and, by implication, Judge Mathews (R. 90), all assumed that all of the Board's findings, if supported by evidence, were conclusive upon the court. Judge Wilbur predicated his conclusions solely upon the Board's findings. Judges Mathews and Garrecht reviewed the evidence *only* for the purpose of ascertaining whether there was *any* evidence to support certain of the findings. They arrived at conflicting conclusions upon *that* question. It is clear that neither of them made any independent finding, based upon his own appraisal of the evidence.

It is at least reasonably possible, and we think it altogether probable, that the findings of the court below, if made upon the basis of its independent appraisal of the record, according due consideration to the Board's findings, would have been so different therefrom as to leave no factual basis for any portion of the Board's order. As pointed out *supra,* if there was actually a "controversy concerning terms, tenure or conditions of employment" at the time of the strike, it must have occurred in New York; and there is no competent evidence of what occurred there. There is only a modicum of "double hearsay" and "triple hearsay". This in the face of the fact that Salisbury, who was supposed to be a party to that controversy, was present at the hearing before the Board and was sworn as a witness. It

is unlikely that judges, trained in the rules of evidence, would have been satisfied with such tenuous and "gossamer" evidence under those circumstances.

On the other hand, there is evidence that, *if* there was a "controversy" in New York, it was quite likely a controversy between the marine operators and the respondent. *They were not employees of respondent,* and therefore could not have had a controversy with *respondent* "concerning terms, tenure or conditions of employment", within the meaning of the Act, i. e., terms of employment of respondent's employees. The marine operators are the "men who work the ships" at sea. They are never ashore except when their ships come in (R. 153). The evidence (R. 1098-9) and the findings indicate (R. 20) that each marine operator is an employee, not of a radio company, but of the ship on which he works. The radio companies merely *recommend* operators for employment by the ships. There were two proposed contracts which were to be presented to respondent in New York, at some time after September 13th,—the marine contract and the point-to-point contract (R. 20, 21). The evidence does not show whether both actually were presented, or only one. It does show, however, that the Board's finding that the point-to-point agreement was presented to Stone, in San Francisco, September 13th, is contrary to the Board's own evidence. The discussion on that day related to the proposed marine contract. "Bash had no copy of *our* agreement with him and hence matters pertaining to *our* agreement were lightly touched * * *" (R. 1098).

It is probable, from the evidence (R. 1098-9), that if there was a "controversy" in New York, it was over the marine contract. If so, it did not concern "terms, tenure or conditions of employment," or representation of employees. (There is no claim that respondent refused to bargain with the union.) It concerned the grievance of the marine operators that "Mackay * * * was *recommending* non-A. R. T. A. marine operators to the steamship com-

panies." The Board so found (R. 20). It is therefore altogether probable, from the evidence, confirmed to some extent by the findings, that when the point-to-point operators in San Francisco walked out, they did so to give moral support to the marine operators in their grievance over the practice which Mackay pursued in "recommending operators to the steamship companies."[37] In our "brief in opposition" we referred to this as a "sympathetic strike." Counsel say that this suggestion "is in the most exact sense frivolous." (P. Br. 31.) We did not so intend it. Perhaps it was not, in the technical sense, a "sympathy strike." But that is what the employees called it, and there is no doubt that *they* so regarded it. (R. 1099.)

We have referred to the evidence, to this extent, only for the purpose of showing the likelihood that the court below would have found the facts differently, if they had weighed the evidence and exercised their independent judgment thereon. It seems to us that we can justly claim to be "aggrieved" by their omission to do so. This is because of the probability that, if they had done so, this case would not have reached this Court, or would have come before the Court upon a different factual basis presenting different questions of law.

The question here raised is of great public importance, not only to the Board and to this respondent, but to all employers and employees. We urge, with great deference, but none the less earnestly, that the Court may see fit to decide it in this case.

VI. This case is not properly before this Court because the petition for writ of certiorari was not filed within three months after entry of the final judgment of the court below.

The jurisdiction of this Court to review decisions of Circuit Courts of Appeals is defined by Sections 347 and 350 of Title 28 of the U. S. Code. Section 350 provides that

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(37) "* * * Mr. Salisbury had advised that we go on strike at this time *in conjunction* with the New York local." (R. 176).

no writ of certiorari "to bring any judgment or decree before the Supreme Court for review shall be allowed or entered unless application therefor be duly made within three months after the entry of such judgment or decree. . . ." This limitation is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 418.

The original judgment of the court below denying the petition of the National Labor Relations Board for enforcement of its order herein was filed and entered January 11, 1937. However, petitioner does not seek a review of this judgment, but of a "judgment" entered, after a so-called rehearing, on October 19, 1937. (R. 124, P. 2.) Unless the judgment of October 19, 1937, was entered within the proper exercise of the powers conferred upon the court below by the Act, it is a nullity, with the result that the judgment of January 11, 1937, was the final judgment herein, and the petition for certiorari was filed more than nine months too late. It is the contention of the respondent that the "rehearing" in the court below was held after the jurisdiction of that court had been exhausted under the provisions of the Act. In accordance with this contention respondent duly caused its exceptions to be noted to the order entered herein by the lower court on May 17, 1937, granting the petition for rehearing. (R. 112.)

A. The court below had no authority under the National Labor Relations Act to grant a rehearing. Therefore, the judgment of January 11, 1937, was the final judgment of the court below, and this petition for certiorari was filed too late.

The jurisdiction of the Circuit Court of Appeals to review decisions and orders of the National Labor Relations Board is conferred by Section 10(e) of the National Labor Relations Act. In proceeding under this section the court below was not exercising its general jurisdiction as an appellate court but was functioning as a special statutory court; not as a court of appeal but as a court of the first instance. It is, in fact, a newly created court of limited jurisdiction which never existed prior to the enactment of

the Act. As such, it possesses such powers, duties and jurisdiction as are conferred upon it by that Act and no more.

The court's powers under the Act are stated in Section 10(e) thereof, as follows:

> "* * * to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board."

In addition to the foregoing, the court, upon a proper and seasonable application for leave to adduce additional evidence

> "* * * may order such additional evidence to be taken before the Board * * *."

The foregoing comprise all of the powers expressly granted to the court in this Act, and under the rule, *expressio unius exclusio alterius,* no additional powers can be implied, other than those reasonably necessary to enable the court to perform the duties imposed upon it.

It may be doubted that any court ever was constituted with narrower jurisdiction than this, to-wit, with only the power to enforce, modify and enforce, or set aside orders of the Board; and to grant temporary injunctive relief as an incident thereto. It is submitted that the only implied powers possessed by this special statutory court are those which are essential to the performance of the duties imposed upon it by the Act, to-wit, the power to punish for contempt and the power to make its records speak the truth. This latter does not include the power to change its judgment after the same has become final, or to grant a rehearing for the purpose of reconsidering its final judgment. This is not only unnecessary to the performance of the prescribed duties, but would frustrate one of the avowed policies of the Act, namely, the prompt determination of all labor disputes.

These provisions of the National Labor Relations Act were copied, substantially verbatim, from the corresponding provisions of the Federal Trade Commission Act, 15 U. S. C. 45. Prior to their adoption in the instant Act it had been held that a circuit court of appeals when functioning thereunder possesses no general jurisdiction or "inherent" or implied powers. In *Federal Trade Commission* v. *Balme,* 23 F. (2d) 615, at 618, the court said:

> "The Federal Trade Commission Act confers special statutory jurisdiction, and the extent of such jurisdiction and the conditions of its exercise over subjects or persons must necessarily depend upon the terms in which the jurisdiction is thus conferred. It does not depend upon the rank of the court upon which it is conferred. It must be strictly pursued because the court does possess jurisdiction over other subjects or persons more extended and general."

In *Chamber of Commerce* v. *Federal Trade Commission, supra,* 280 F. 45, at 47, the court said:

> "This act creates powers not otherwise conferred upon Circuit Courts of Appeals, and such courts are limited strictly to the powers thus specified."

It is a settled rule of statutory construction that when a statute which has been judicially construed is reenacted in the same or substantially the same terms, the Congress is presumed to be familiar with that construction and to have adopted it as part of the law, unless a different construction is expressly required. *Dollar Sav. Bank* v. *United States,* 19 Wall. 227, 237; *Camp* v. *Gress,* 250 U. S. 308, 315, 316; *Heald* v. *Dist. of Columbia,* 254 U. S. 20, 22, 23.

The application of this rule to the instant problem constrains the conclusion that Congress, in enacting the National Labor Relations Act in the light of the construction theretofore placed by the courts upon the Federal Trade Commission Act, intended to grant to the courts the several powers enumerated therein and none other. It fol-

lows that when the court herein had rendered its self-executing judgment denying the Board's petition, and had caused the same to be entered without reservation, it had no power thereafter to entertain or to grant a petition for rehearing. It is of course conceded that if the court had entered a decree for the enforcement of the Board's order by injunction, it would have retained jurisdiction so long as such injunction remained in force. But that is not this case.

Not only does this Act omit (*ex industria* as we think) to confer power upon the court to grant a rehearing, but the clear implication of its provisions is that the court shall not possess that power. It provides, Section 10(e), that the

> "* * * judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States * * * as provided in sections 239 and 240 of the Judicial Code as amended (U. S. C., Title 28, secs. 346 and 347)."

This is tantamount to declaring that there shall be no review of the judgment except by the Supreme Court. This means that there shall be no rehearing by the court below, because a rehearing is a review of the case upon the same record by the same court. *United States* v. *Bentley & Sons Co.*, 292 F. 229, 237.

Another circumstance which tends to confirm the conclusion that a rehearing after final judgment is not authorized under this Act is the provision in Section 10(i) thereof, that

> "Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed."

Petitions for rehearing are always dilatory in effect, regardless of their intent. The proceedings incident to the purported rehearing herein caused a delay of more than nine months from the entry of the final judgment to the reentry of the same judgment.

It is submitted that the judgment entered January 11, 1937, was and is the final judgment herein and that all proceedings of the Circuit Court of Appeals, subsequent thereto, were *coram non judice* and of no effect.

B. The court below, while functioning as a "labor relations court", had no "inherent power" to grant a rehearing "before the expiration of the term".

Counsel point to the inherent power of the district courts, while functioning in the exercise of their general jurisdiction[38] in law or equity, to grant a rehearing after judgment, "before the expiration of the term" (P. Br. 71). Counsel argue that the court below possessed the same "inherent power" while functioning as a "labor relations court". The conclusion is a *non sequitur*. At the time of the adoption of our Constitution, the power to grant a rehearing, within the term of court, after judgment, had become recognized and established as one of the "inherent powers" possessed by courts of *general* jurisdiction in law or equity. Therefore, when our district courts were created and endowed with such general jurisdiction,[38] it was concluded that this power of rehearing inhered in such grant. Consequently the federal courts have prescribed in their rules of court, the limits of their respective terms of court. We know of no instance, however, where an inferior court,[39] of narrow and strictly limited "jurisdiction", has been held to possess this "inherent power". Inasmuch as the possession of this power is not at all necessary to the adequate functioning of the "labor relations court", it cannot be said to have been granted by implication.

It is true that this power has been assumed and exercised by courts, in some instances, when functioning under the

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[38] General jurisdiction within the field of federal jurisprudence.

[39] Notwithstanding the lofty position and great dignity of the circuit courts of appeals, it is submitted that, when functioning as "labor relations courts", they are properly described as "inferior courts of limited jurisdiction".

Trade Commission Act, and, once, when functioning under this Act. But in no case in which this has been done, (so far as we have been able to learn), has the question of the court's power so to do been raised by anyone.

If either of the foregoing contentions is sound, it follows that the judgment entered January 11, 1937, was and is the final judgment in said proceeding; that the proceedings thereafter taken therein, including the purported decision of October 19, 1937 (which did not purport to change in any respect the judgment of January 11, 1937), were *coram non judice* and an utter nullity; with the result that this petition for certiorari, which was filed more than ten months after the entry of the final judgment, is too late and should be dismissed for want of jurisdiction.

VII. The order is so arbitrary and capricious that the court below was warranted in denying its enforcement.

For the reasons above stated, the Board should not have ordered reinstatement of the five employees specified in the order and should not have ordered respondent to cease and desist discharging members of A. R. T. A. However, aside from the question of the propriety of any order as to discharge of the five individuals or as to any other members of A. R. T. A., the order is arbitrary and capricious and goes beyond any reasonable application of the law. The order is, first, "to make whole" said five individuals "for any loss of pay that they have suffered by reason of their discharge." The order then proceeds to more than make them whole by requiring payment not only of their normal wages from the date of discharge (which never occurred) "to the date of such offer of reinstatement" less only "the amount earned subsequent to discharge *as shown in the Findings of Fact.*"

Obviously, the amount shown in the Findings of Fact as having been earned by these five individuals can be only

the amount to the date of the conclusion of the hearing before the Trial Examiner, on the 20th of December, 1935. More than two years have elapsed since that date. These five individuals have undoubtedly had other employment and earned other wages during this period of two years. Yet the order of the Board requires the payment of full wages for this two year period without any deduction for wages earned subsequent to December 20, 1935. This is, in effect, a *penalty* and beyond the remedial powers of the Board.

Paragraph (c) of the order, in requiring the respondent to refrain from discharging members of A. R. T. A. in the future does not place any limitation upon such a drastic mandate. The order as written would prevent discharge for any reason. If any order at all relating to discharge were admissible, it should be limited to a discharge because of discrimination by reason of membership in the union.

Section 10 (e) of the Act provides that the Circuit Court of Appeals shall have power to make or enter an order "upon the pleadings, testimony and proceedings * * * a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board."

We again emphasize that the respondent, as a public service corporation, required by the Federal Communications Act to give service to the public was under the obligation of keeping its services open and available to the public, that its transfer of other employees (not strikebreakers) to San Francisco for the purpose of keeping its services open was in accord with its obligations as such a public service carrier and that in no case that has been decided by any Circuit Court of Appeals has there been any enforcement order issued to compel discharge of existing employees who were employed prior to the date of any unfair labor practice.

Conclusion.

It is submitted that, if any one of respondent's contentions, *supra,* be sound, it follows, regardless of the merit or demerit of the other contentions, that the judgment of the court below should be affirmed.

Respectfully submitted,

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March, 1938.

SUPREME COURT OF THE UNITED STATES.

No. 706.—October Term, 1937.

National Labor Relations Board, Petitioner, *vs.* Mackay Radio & Telegraph Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[May 16, 1938.]

Mr. Justice Roberts delivered the opinion of the Court.

The Circuit Court of Appeals refused[1] to decree enforcement of an order of the National Labor Relations Board.[2] We granted certiorari because of an asserted conflict of decision.[3]

The respondent, a California corporation, is engaged in the transmission and receipt of telegraph, radio, cable, and other messages between points in California and points in other states and foreign countries. It maintains an office in San Francisco for the transaction of its business wherein it employs upwards of sixty supervisors, operators and clerks, many of whom are members of Local No. 3 of the American Radio Telegraphists Association, a national labor organization; the membership of the local comprising "point-to-point" or land operators employed by respondent at San Francisco. Affiliated with the national organization also were locals whose members are exclusively marine operators who work upon ocean going vessels. The respondent, at its San Francisco office, dealt with committees of Local No. 3; and its parent company, whose headquarters were in New York, dealt with representatives of the national organization. Demand was made by the latter for the execution of agreements respecting terms and conditions of employment of marine and point-to-point operators. On several occa-

[1] 87 F. (2d) 611; 92 F. (2d) 761.

[2] 1 N. L. R. B. 201.

[3] See Jeffery-DeWitt Insulator Co. *v.* National Labor Relations Board, 91 F. (2d) 134; National Labor Relations Board *v.* Bell Oil & Gas Co., 91 F. (2d) 509; National Labor Relations Board *v.* Carlisle Lumber Co., 94 F. (2d) 138; Black Diamond S. S. Corp. *v.* National Labor Relations Board, 94 F. (2d) 875.

sions when representatives of the union conferred with officers of the respondent and its parent company the latter requested postponement of discussion of the proposed agreements and the union acceded to the requests. In September 1935 the union pressed for immediate execution of agreements and took the position that no contract would be concluded by the one class of operators unless an agreement were simultaneously made with the other. Local No. 3 sent a representative to New York to be in touch with the negotiations and he kept its officers advised as to what there occurred. The local adopted a resolution to the effect that if satisfactory terms were not obtained by September 23 a strike of the San Francisco point-to-point operators should be called. The national officers determined on a general strike in view of the unsatisfactory state of the negotiations. This fact was communicated to Local No. 3 by its representative in New York and the local officers called out the employes of the San Francisco office. At midnight Friday, October 4, 1935, all the men there employed went on strike. The respondent, in order to maintain service, brought employes from its Los Angeles office and others from the New York and Chicago offices of the parent company to fill the strikers' places.

Although none of the San Francisco strikers returned to work Saturday, Sunday, or Monday, the strike proved unsuccessful in other parts of the country and, by Monday evening, October 7th, a number of the men became convinced that it would fail and that they had better return to work before their places were filled with new employes. One of them telephoned the respondent's traffic supervisor Monday evening to inquire whether the men might return. He was told that the respondent would take them back and it was arranged that the official should meet the employes at a downtown hotel and make a statement to them. Before leaving the company's office for this purpose the supervisor consulted with his superior, who told him that the men might return to work in their former positions but that, as the company had promised eleven men brought to San Francisco they might remain if they so desired, the supervisor would have to handle the return of the striking employes in such fashion as not to displace any of the new men who desired to continue in San Francisco. A little later the supervisor

met two of the striking employes and gave them a list of all the strikers together with their addresses, and the telephone numbers of those who had telephones, and it was arranged that these two employes should telephone the strikers to come to a meeting at the Hotel Bellevue in the early hours of Tuesday, October 8th. In furnishing this list the supervisor stated that the men could return to work in a body but he checked off the names of eleven strikers who he said would have to file applications for reinstatement which applications would be subject to the approval of an executive of the company in New York. Because of this statement the two employes, in notifying the strikers of the proposed meeting, with the knowledge of the supervisor, omitted to communicate with the eleven men whose names had been checked off. Thirty-six men attended the meeting. Some of the eleven in question heard of it and attended. The supervisor appeared at the meeting and reiterated his statement that the men could go back to work at once but read from a list the names of the eleven who would be required to file applications for reinstatement to be passed upon in New York. Those present at the meeting voted on the question of immediately returning to work and the proposition was carried. Most of the men left the meeting and went to the respondent's office Tuesday morning, Oetober 8th, where on that day they resumed their usual duties. Then or shortly thereafter six of the eleven in question took their places and resumed their work without challenge. It turned out that only five of the new men brought to San Francisco desired to stay.

Five strikers who were prominent in the activities of the union and in connection with the strike, whose names appeared upon the list of eleven, reported at the office at various times between Tuesday and Thursday. Each of them was told that he would have to fill out an application for employment; that the roll of employes was complete, and that his application would be considered in connection with any vacancy that might thereafter occur. These men not having been reinstated in the course of three weeks the secretary of Local No. 3 presented a charge to the National Labor Relations Board that the respondent had violated Section 8(1) and (3) of the National Labor Relations Act.[4] Thereupon the Board filed a com-

[4] U. S. C. Supp. II, Tit. 29, § 158 (1) and (3).

plaint charging that the respondent had discharged and was refusing to employ the five men who had not been reinstated to their positions for the reason that they had joined and assisted the labor organization known as Local No. 3 and had engaged in concerted activities with other employes of the respondent for the purpose of collective bargaining and other mutual aid and protection; that by such discharge respondent had interfered with, restrained, and coerced the employes in the exercise of their rights guaranteed by Section 7[5] of the National Labor Relations Act and so had been guilty of an unfair labor practice within the meaning of Section 8(1) of the Act. The complaint further alleged that the discharge of these men was a discrimination in respect of their hire and tenure of employment and a discouragement of membership in Local No. 3, and thus an unfair labor practice within the meaning of Section 8(3) of the Act.

The respondent filed an answer denying the allegations of the complaint, and moved to dismiss the proceeding on the ground that the Act is unconstitutional. The motion was taken under advisement by the Board's examiner and the case proceeded to hearing. After the completion of its testimony the Board filed an amended complaint to comport with the evidence, in which it charged that the respondent had refused to re-employ the five operators for the reason that they had joined and assisted the labor organization known as Local No. 3 and engaged with other employes in concerted activities for the purpose of collective bargaining and other mutual aid and protection; that the refusal to re-employ them restrained and coerced the employes in the exercise of rights guarateed by Section 7 and so constituted an unfair labor practice within Section 8(1) of the Act. The amended complaint further asserted that the refusal to re-employ the men discriminated in regard to their hire and tenure of employment and discouraged membership in Local No. 3 and thus amounted to an unfair labor practice under Section 8(3) of the Act. The respondent entered a general denial to the amended complaint and presented its evidence. At the conclusion of the testimony the Board transferred the cause for further hearing before the members of the Board at Washington and after oral argument and the filing of a brief, made its findings of fact.

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[5] U. S. C. Supp. II, Tit. 29, § 157.

The subsidiary or evidentiary facts were found in great detail and, upon the footing of them, the Board reached conclusions of fact to the effect that Local No. 3 is a labor organization within the meaning of the Act; that "by refusing to reinstate to employment" the five men in question, "thereby discharging said employes", the respondent by "each of said discharges", discriminated in regard to tenure of employment and thereby discouraged membership in the labor organization known as Local No. 3, and, by the described acts "has interfered with, restrained, and coerced its employes in the exercise of the rights guaranteed by Section 7 of the National Labor Relations Act". As conclusions of law the Board found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7)[6] of the Act. It entered an order that respondent cease and desist from discharging, or threatening to discharge, any of its employes for the reason that they had joined or assisted Local No. 3 or otherwise engaged in union activities; from interfering with, restraining or coercing its employes in the exercise of the rights guaranteed by Section 7 of the Act; offer the five men immediate and full reinstatement to their former positions, without prejudice to rights and privileges previously enjoyed, and make each of them whole for any loss of wages due to their discharge; post notices that the respondent would not discharge or discriminate against members of, or those desiring to become members of, the union, and keep the notices posted for thirty days.

As permitted by the Act, the Board filed in the Circuit Court of Appeals a transcript of the record of its proceeding, and a petition for enforcement of its order. In its answer the respondent denied the jurisdiction of the court on the ground that the Act violated Article III, and the Fifth, Seventh, and Tenth Amendments, of the Constitution; that the order amounted to an abuse of discretion because arbitrary and capricious, and was not supported by the evidence; that the trial examiner erred in his rulings on evidence; that the Board erred in overruling exceptions to his rulings, and that the Board's findings of fact and conclusions of law were erroneous.

[6] U. S. C. Supp. II, Tit. 29, § 152 (6) (7).

Upon the hearing before the Circuit Court of Appeals one judge held that the action of the Board was within the power sought to be conferred upon it by the statute but that the grant of power violated the due process clause of the Fifth Amendment and the award of back pay to the employes, without a jury trial, violated the Seventh Amendment. Another judge held that as the statute defined employes to include a person whose work had ceased "as a consequence of, or in connection with, any current labor dispute", and since there was no allegation, evidence, or finding as to such a dispute, the strikers had ceased to be employes within the meaning of the Act and the respondent's treatment of them could not violate the Act. One judge dissented, holding that the Board's order was within its statutory authority and did not violate the Constitution. A petition and supplemental petition for rehearing were granted and, after argument, the court reaffirmed its former decision. The judge who had previously declared the Board's action within the terms of the statute, but unconstitutional, construed the Act as not intended to work the unconstitutional result of compelling an employer to enter into a contract of employment against his will and, hence, as requiring only that the strikers be reinstated to the position of applicants for employment rather than employes. The other judges adhered to the views they had previously expressed.

The petitioner contends the court erred in holding that men who struck because of a failure of negotiations concerning wages and terms of employment ceased to be employes within the meaning of the statute; erred in not holding it an unfair labor practice, forbidden by the statute, for an employer to discriminate because of union activities in the reinstatement of men who have gone on strike because of a failure of negotiations concerning wages and terms of employment; erred in failing to hold that the Act authorizes the Board to order reinstatement of persons thus discriminated against; and one of the judges erred in holding that the Act, if construed to authorize the Board to require such reinstatement, violates the Fifth Amendment.

On the other hand, the respondent insists that it was not accorded due process of law because the unfair labor practice charged in the original complaint was abandoned and the action of the Board was based upon a conclusion of fact not within

the issues presented; that there is no basis for the Board's order because there is no finding that the strikers ceased work as a consequence of, or in connection with, any labor dispute, as defined in the statute; that the Act does not empower the Board to compel an employer to re-employ or reinstate those who have abandoned negotiations and gone on strike prior to any unfair labor practice, where the employer, after the strike is effective, and before committing any unfair labor practice, has permanently employed others in place of the strikers; that, if the Act be held to authorize the Board's order, it violates the Fifth Amendment; that Article III of the Constitution requires that the court render its independent judgment upon the quasi-jurisidictional facts upon which the Board's order was based; that the Board's order was, in the light of the facts, so arbitrary and capricious as to warrant the court's refusal to enforce it; and that the case is not properly before us because certiorari was not sought within the time fixed by law.

We hold that we have jurisdiction; that the Board's order is within its competence and does not contravene any provision of the Constitution.

First. Within the thirty days prescribed by the rules of the Circuit Court of Appeals the petitioner moved for a rehearing and for leave, if deemed appropriate, to take further evidence and add the same to the record before the Board. While this application was pending a supplemental petition for rehearing was presented. During the term the court entertained both petitions and granted a rehearing and, after oral argument and submission of briefs, wrote further opinions based upon the petitions for rehearing. We think the court had not lost jurisdiction of the cause; that its final judgment was the order entered upon the petitions for rehearing and that the three months within which the petitioner must apply for certiorari ran from the date of the order dismissing the petition for rehearing and confirming the original order.

Second. Under the findings the strike was a consequence of, or in connection with, a current labor dispute as defined in Section 2(9) of the Act. That there were pending negotiations for the execution of a contract touching wages and terms and conditions of employment of point-to-point operators cannot be denied. But it is said the record fails to disclose what caused these negotiations to fail or to show that the respondent was in any wise in

fault in failing to comply with the union's demands; and, therefore, for all that appears, the strike was not called by reason of fault of the respondent. The argument confuses a current labor dispute with an unfair labor practice defined in Section 8 of the Act. True there is no evidence that respondent had been guilty of any unfair labor practice prior to the strike but within the intent of the Act there was an existing labor dispute in connection with which the strike was called. The finding is that the strike was deemed "advisable in view of the unsatisfactory state of the negotiations" in New York. It was unnecessary for the Board to find what was in fact the state of the negotiations in New York when the strike was called, or in so many words that a labor dispute as defined by the Act existed. The wisdom or unwisdom of the men, their justification or lack of it, in attributing to respondent an unreasonable or arbitrary attitude in connection with the negotiations, cannot determine whether, when they struck, they did so as a consequence of or in connection with a current labor dispute.

Third. The strikers remained employes under Section 2(3) of the Act which provides: "The term 'employee' shall include . . . any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, . . ." Within this definition the strikers remained employes for the purpose of the Act and were protected against the unfair labor practices denounced by it.

Fourth. It is contended that the Board lacked jurisdiction because respondent was at no time guilty of any unfair labor practice. Section 8 of the Act denominates as such practice action by an employer to interfere with, restrain, or coerce employes in the exercise of their rights to organize, to form, join or assist labor organizations, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or "by discrimination in regard to . . . tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:" . . . There is no evidence and no finding that the respondent was guilty of any unfair labor practice in connection with the negotiations in New York. On the contrary, it affirmatively appears that the respondent was

negotiating with the authorized representatives of the union. Nor was it an unfair labor practice to replace the striking employes with others in an effort to carry on the business. Although Section 13 provides, "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike", it does not follow that an employer, guilty of no act denounced by the statute, has lost the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them.[7] The assurance by respondent to those who accepted employment during the strike that if they so desired their places might be permanent was not an unfair labor practice nor was it such to reinstate only so many of the strikers as there were vacant places to be filled. But the claim put forward is that the unfair labor practice indulged by the respondent was discrimination in reinstating striking employes by keeping out certain of them for the sole reason that they had been active in the union. As we have said, the strikers retained, under the Act, the status of employes. Any such discrimination in putting them back to work is, therefore, prohibited by Section 8.

Fifth. The Board's findings as to discrimination are supported by evidence. We shall not attempt a discussion of the conflicting claims as to the proper conclusions to be drawn from the testimony. There was evidence, which the Board credited, that several of the five men in question were told that their union activities made them undesirable to their employer; and that some of them did not return to work with the great body of the men at 6 o'clock on Tuesday morning because they understood they would not be allowed to go to work until the superior officials had passed upon their applications. When they did apply at times between Tuesday morning and Thursday they were each told that the quota was full and that their applications could not be granted in any event until a vacancy occurred. This was on the ground that five of the eleven new men remained at work in San Francisco. On the other hand, six of the eleven strikers listed for separate treatment who reported for work early Tuesday morning, or within the next day or so, were permitted to go back to work and were not

[7] Compare National Labor Relations Board v. Bell Oil & Gas Co., 91 F. (2d) 509.

compelled to await the approval of their applications. It appears that all of the men who had been on strike signed applications for re-employment shortly after their resumption of work. The Board found, and we cannot say that its finding is unsupported, that, in taking back six of the eleven men and excluding five who were active union men, the respondent's officials discriminated against the latter on account of their union activities and that the excuse given that they did not apply until after the quota was full was an afterthought and not the true reason for the discrimination against them.

As we have said, the respondent was not bound to displace men hired to take the strikers' places in order to provide positions for them. It might have refused reinstatement on the grounds of skill or ability but the Board found that it did not do so. It might have resorted to any one of a number of methods of determining which of its striking employes would have to wait because five men had taken permanent positions during the strike but it is found that the preparation and use of the list, and the action taken by respondent, was with the purpose to discriminate against those most active in the union. There is evidence to support these findings.

Sixth. The Board's order does not violate the Fifth Amendment. The respondent insists that the relation of employer and employe ceased at the inception of the strike. The plain meaning of the Act is that if men strike in connection with a current labor dispute their action is not to be construed as a renunciation of the employment relation and they remain employes for the remedial purposes specified in the Act. We have held that, in the exercise of the commerce power, Congress may impose upon contractual relationships reasonable regulations calculated to protect commerce against threatened industrial strife. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1, 48. The Board's order there sustained required the reinstatement of discharged employes. The requirement interfered with freedom of contract which the employer would have enjoyed except for the mandate of the statute. The provision of the Act continuing the relationship of employer and employe in the case of a strike as a consequence of, or in connection with, a current labor dispute is a regulation of the same sort and within the principle of our decision.

Seventh. The affirmative relief ordered by the Board was within its powers and its order was not arbitrary or capricious.

As we have held in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, No. 413, October Term, 1937, the relief which the statute empowers the Board to grant is to be adapted to the situation which calls for redress. On the basis of the findings, five men who took part in the strike, were discriminated against in connection with a blanket offer to reinstate striking employes. The Board enjoined further discrimination against employes by reason of union affiliation but it could not grant complete relief in respect of the five men short of ordering that the discrimination be neutralized by their being given their former positions and reimbursed for the loss due to their lack of employment consequent upon the respondent's discrimination. The order is criticized as arbitrary in that it is said to award back pay to date of reinstatement with deductions only for what was earned to the date of the order. We do not so read it, and the Board admits that credit must be given for all sums earned to date of reinstatement, and so construes the order. It is further said that the order arbitrarily and unreasonably requires the notices to be posted to state that respondent will not discharge its reinstated employes for any reason whatever. This clause of the order is inartificially drawn, and counsel for the Board admit that it should be read in connection with the remainder of the order forbidding discharge on the ground of union activity.

Eighth. The respondent was not denied a hearing with respect to the offense found by the Board. The respondent says that it was summoned to answer a complaint that it discriminated by discharging the five men and that, after all the evidence was in, this complaint was withdrawn and a new one presented asserting that its refusal to re-employ the five men was the head and front of its offending. Then it is said that when the Board came to make its findings it reverted to the position that what the respondent did had not been a failure to employ but a wrongful discharge. Thus the respondent claims that it is found guilty of an unfair labor practice which was not within the issues upon which the case was tried. The position is highly technical. All parties to the proceeding knew from the outset that the thing complained of was discrimination against certain men by reason of their alleged union

activities. If there was a current labor dispute the men were still employes by virtue of Section 2(3), and the refusal to let them work was a discharge. The respondent says that as the Board failed to find, in so many words, that there was a current labor dispute its conclusion of fact that the men were discharged has no basis. But the Board found that the strike was called because the strikers were informed that the negotiations for a working agreement in New York were not proceeding satisfactorily. We think its action cannot be overturned for the mere reason that it failed to characterize the situation as a current labor dispute. The respondent further urges that, when the amended complaint was filed and the original one withdrawn, the charge it had to meet was a refusal to re-employ; that the phrase "re-employ" means "employ anew"; that if the Board had found a failure to employ the five men because of discrimination forbidden by the Act, the findings would have followed the complaint, whereas the Board, in its conclusions of fact, referred to respondent's action as "refusal to reinstate to employment" and as a discharge; and the argument is that the findings do not follow the pleadings.

A review of the record shows that at no time during the hearings was there any misunderstanding as to what was the basis of the Board's complaint. The entire evidence, pro and con, was directed to the question whether, when the strike failed and the men desired to come back and were told that the strike would be forgotten and that they might come back in a body save for eleven men who were singled out for different treatment, six of whom, however, were treated like everyone else, the respondent did in fact discriminate against the remaining five because of union activity. While the respondent was entitled to know the basis of the complaint against it, and to explain its conduct, in an effort to meet that complaint, we find from the record that it understood the issue and was afforded full opportunity to justify the action of its officers as innocent rather than discriminatory.

At the conclusion of the testimony, and prior to oral argument before the examiner, the Board transferred the proceeding to Washington to be further heard before the Board. It denied respondent's motion to resubmit the cause to the trial examiner with directions to prepare and file an intermediate report. In the Circuit Court of Appeals the respondent assigned error to this ruling.

It appears that oral argument was had and a brief was filed with the Board after which it made its findings of fact and conclusions of law. The respondent now asserts that the failure of the Board to follow its usual practice of the submission of a tentative report by the trial examiner and a hearing on exceptions to that report deprived the respondent of opportunity to call to the Board's attention the alleged fatal variance between the allegations of the complaint and the Board's findings. What we have said sufficiently indicates that the issues and contentions of the parties were clearly defined and as no other detriment or disadvantage is claimed to have ensued from the Board's procedure the matter is not one calling for a reversal of the order. The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights. Compare *Morgan* v. *United States,* 298 U. S. 468, 478. The contention that the respondent was denied a full and adequate hearing must be rejected.

Ninth. The other contentions of the respondent are overruled because foreclosed by earlier decisions of this court.

The judgment of the Circuit Court of Appeals is reversed and the cause is remanded to that court for further proceedings in conformity with this opinion.

So ordered.

Mr. Justice CARDOZO and Mr. Justice REED took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.